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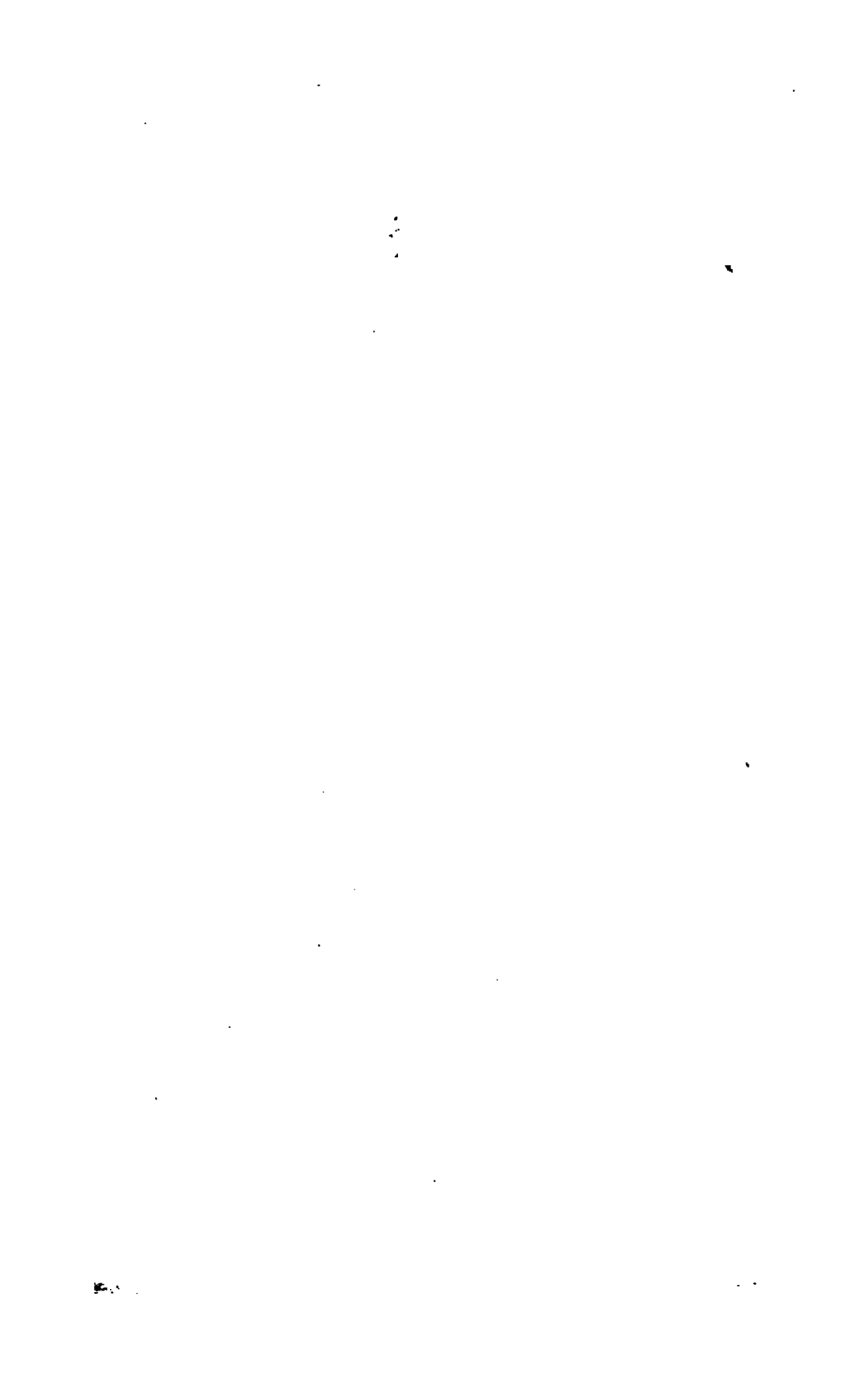
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A PLAIN LETTER

TO THE

LORD CHANCELLOR

ON THE

INFANT CUSTODY BILL.



"In his youth he had been an advocate, and it is recorded of him as a remarkable fact, that he would never defend an unjust cause."

Life of Francia, Dictator of Paraguay.

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BY PEARCE STEVENSON, ESQ.

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A LETTER
TO THE LORD CHANCELLOR.

MY LORD,

WHILE the recess still affords comparative leisure for the consideration of such questions as may be brought forward during the approaching Session of Parliament, permit me respectfully to solicit your attention to a brief notice of the objections which have been made to the passing of the Infant's Custody Bill—a measure which, from its being introduced with the hope of remedying a defect of power in the courts under your Lordship's immediate jurisdiction, as well as from the fact of your acting as *Parens Patriæ* for the Sovereign of these realms, would seem entitled to your especial consideration.

From the strong position at first taken by the opponents of this measure, namely, that the legislature had no power to interfere with "the divine prescriptive right" of fathers over their children, they have been fairly beaten. It is proved that the law

has interfered, and *does* interfere with the father's right of custody, though hitherto only in cases where property has been concerned; and the question is simply whether there shall be an interference for the sake of the mother, as well as for the sake of pounds, shillings, and pence; and, if so, then in what way such interference can be rendered practicable or advantageous.

So far from doubting the power of the legislature to decide on this, many opposed the plan introduced last session, because they considered it a *half* measure; one which did not go far enough: and even Lord Brougham, (whose great talents and restless energies were employed, for the hour, in opposing Serjeant Talfourd's Bill,) after arguing that women endured no greater injustice in this respect than in many others which he enumerated, observed that it might be matter of consideration whether such a provision should not be enacted as would give power, when the husband was parted from the wife on account of cruelty or adultery, *to transfer the custody of the children entirely from the father to the mother; or such other person as under the circumstances it might seem proper to name*; thus admitting to the fullest extent the power of the legislature to interfere; even while giving his most strenuous opposition to the particular plan of interference at that time proposed.

Indeed, the degree of admission on the part of the legislature, of the "divine prescriptive right" of a father to the custody of his children, appears to be

exceedingly vague; for, although it be ruled that this right shall extend to the hour of an infant's birth, and accordingly a decision to that effect was given in the case of De Manneville, where the babe was torn from the nursing mother's breast; yet it appears by another decision, (*Rex v. Smith*,) that if the child be of or about the age of 14, and *unwilling* to return to his father, the law, proceeding once more on the principle of non-intervention, refuses to *force* his return, and leaves him in the custody he may have chosen for himself.* It also appears, that where property is at stake, or where heresy in religious, or even political opinions, seems to justify public interference on behalf of the State, (whose born and natural subject that infant, as well as its father, is assumed to be,) not only the right of custody may be interfered with, but it may be totally *annulled*: the legislature may claim from the father the infant member of a society governed by common laws, and acknowledging one common faith, to be educated in accordance with that faith, and in obedience to those laws; and may supply the father's place by a guardian, or guardians, of its own appointing.

* The *King v. Penelope Smith*, (2 Str. 982,) where a boy, between 13 and 14, was brought up by a writ of *habeas corpus*, sued out by his father, to take him from an aunt who kept him: the Court set the child at liberty, to go where he thought fit.

See also the *King v. Sir F. Blake Delaval and others*, (3 Burr. 1434,) where application was made for a writ of *habeas corpus* to bring up Ann Catley, a girl 18 years of age.

To what, then, does even the present admission by law of "the father's right," so hotly raved about by the opponents of the Bill, amount? Simply to this, that while the child is of such tender years that the custody of the father *must*, from the nature of circumstances, be purely nominal; while he is obliged to provide it with a nurse, or some other substitute for its banished mother; in short, during that period of its life which God and nature point out as only fit for female care and tenderness—the right of the *male* parent shall be strictly enforced and supported; so strictly, indeed, that the mother who attempts to retain a child against her husband's will is liable to *imprisonment* for her contumacy. *But*, if the child who is the subject of dispute, have attained an age when if a girl, one rash step may plunge it into irretrievable ruin, and when if a boy, female guidance is generally of no earthly service, and a father's authority becomes especially requisite, *then* the undisputed right of custody ceases to have the protection of the legislature, and the father who, while his child was an infant at the breast, could have imprisoned its own mother for rebellion against his claim, may find himself totally unable to withdraw his more mature offspring from the custody of a distant relation.

If we add to this plain statement the fact that, although property and religious opinions form grounds of interference, private misconduct does not; and that no degree of tyranny or brutality, nor

the most gross and open infidelity on the part of the husband, is understood to bar his power to take his children from his wife, (although the wife be perfectly irreproachable in all respects ;) if, I repeat, we add this strange and appalling fact, we shall have an exact explanation of the degree in which, and the circumstances under which, the father's "divine prescriptive right" is admitted by the English legislature. Yet this is the confused and anomalous state of things which the opponents of Serjeant Talfourd's Bill uphold ; this is the position of the father's right which appears to them so faultless and perfect, that it would be sacrilege and folly to alter it, even in the degree of alteration sought, namely, that where the wife is blameless, the legislature shall protect her claim to access to her infant children.

It has been asserted, as I have before mentioned, both by Lord Brougham and others, that the admitted hardships and injustice to women in *this* instance, is not greater than in others ; and that all such instances arise out of their general position as inferior members of the social and political body. With every respect for the authority of the Noble Lord who heads this class of objectors, I must deny either that the particular acts of oppression aimed at by the Infant's Custody Bill, *are* the *necessary* results of an inferior position ; or that women *do* suffer equally in any other instance from want of legal protection. An inferior position, that is, a position subject to individual authority, does not imply the

absence of claim to general protection. To say that a wife should be otherwise than dutiful and obedient to her husband, or that she should in any way be independent of him, would be absurd : as Johnson said of a woman's independence of public opinion, "If it were possible it would not be just ; and if it were just it would not be possible." But there is a very wide difference between being subject to authority and subject to oppression. Take any analogous instance of inferiority of position ; not a servant, for servants are by far the most independent members of the community at large ; but take a soldier, a sailor, or an apprentice ; the situation of captain of a ship, colonel of a regiment, master of a parish apprentice, being perhaps the nearest approach to despotic power known in England. In all these instances (for the wisest and best reasons), *authority* is stretched to its utmost limits ; but *oppression* is forbid and guarded against. The sailor on the high seas, the soldier serving at home or abroad, the forlorn and friendless apprentice, all know that the strong arm and vigilant eye of the law exist for *them*, as much as for those who are set over them. Nothing but a defect of evidence—nothing but the secrecy which rarely attends crime, can in these instances prevent acts of injustice, cruelty and oppression, from being followed by punishment. Is it so with the authority of the father over the mother of his children ? Does the clear evidence of its being a case of cruelty secure her redress ? No. But this injustice is not the result of any inferiority of social

position, implying, of necessity, as in other cases of inferiority, a certain non-interference with the authority exerted over her; it results, on the contrary, from an anomaly in the law; from a peculiar defect of protection in this single instance, which has not its parallel in any other feature of the social system; and which habit and prejudice alone could teach us to mock with the name of justice.

Lord Brougham mentioned, as an equally unjust result of the general position of women, the fact that a good wife's property might be at the disposal of a bad husband: that even her laborious earnings might be squandered by him on selfish and guilty pleasures, and that there is nothing in *the law* to prevent the husband spending his wife's money on his kept mistress, or in any other way that pleases him. This is true, but there is nevertheless a balance of justice in the laws respecting property, for a man cannot leave his wife to beggary and starvation, however much disposed to do so: he is compelled to provide for her; he is made answerable for her debts; and, so far from following in this instance any principle of non-intervention, the legislature takes upon itself, in cases where the wrong is clearly on the woman's side, to assign a living to the wife, frequently, if not generally, to the amount of one-third of the husband's income. Although, therefore, her inferior position as a social member, implies that she shall not be considered as possessed of separate property apart from her husband's control, her equal claim to legislative protection is clearly

asserted and maintained; and this is precisely the sort of balance of justice which is *wanting* in the matter of Infant Custody.

Again, Lord Brougham argued that, as adultery was by the law of God as great a crime in man as in woman, and reprobated in both by the law of the land, it was a gross injustice that it should not be equally punished; which was so far from being the case, that the woman had the utmost difficulty in obtaining a divorce from an unfaithful husband, and then it was not such a divorce as would enable her to marry again; while the husband could, on the contrary, after a verdict in his favour from the ecclesiastical court, obtain, *almost as a matter of course*, a divorce which would enable him to form new ties. Now, there is certainly much injustice apparent in this; but there is nothing which revolts the feelings and the understanding, as there is in the law affecting a mother's claim. The sin of adultery is the same in man and woman; but on the part of the woman that sin may be productive of greater social evils, and therefore it satisfies our ideas of natural justice that she should receive a heavier punishment. To say nothing of the implied destruction of purity, modesty, of all the sweet and tender qualities which are expected from a woman and not from a man, the woman who is an unfaithful wife may impose on her husband, and her husband's family, children who have as little right to his inheritance as to his affection. There is no limit to the effect of *her* treachery : it is not like the man's, a single sin dying

within itself, but a sin that may give rise to every species of detestable consequence ; the spurious child who is the son of her lover may cheat the son of her husband of his patrimony, or deprive others of the property who should have rightfully succeeded to it ; and the grossest partialities, the bitterest enmities, may spring up in a family where *doubt* has been infused like a slow poison to corrupt the best affections of the human heart. These are the causes which make the social punishment more bitter for unfaithful wives than for unfaithful husbands, and there is no question but that even to women themselves this inequality of punishment appears, if not *justifiable*, at least *explicable* on these grounds.

The greatest instance of injustice, among those enumerated by Lord Brougham, is the fact, that where an action for damages is brought by the husband against the supposed lover of his wife, *she can make no defence* ; that she is not an acknowledged party to the suit, although *hers* is the character at immediate issue ; although in fact *she* is the person prosecuted ; although the sole object of the suit is to prove her guilty. While the advocate engaged by her husband is employing all the ingenuity of rhetoric against her ; assuming her guilt, and working upon the feelings of the jury by a description of the husband's distress, (one representation being perhaps about as true as the other ;) while he is considering himself *bound*, according to Lord Brougham's printed words, "*in the spirit of duty to his client,*" not to regard "*the animosity, the sufferings, the torments, or the destruction*

he may bring upon others;" but to remember only the end for which he was retained; *she* is condemned to remain perfectly neuter; perfectly helpless; excluded, by the principles of our jurisprudence, from all possibility of defence; dependant for the opinion which may be formed of *her* conduct, on the few scattered circumstances in her favour which may belong to the argument on the opposite side; and of which the advocate of her husband's adversary makes just so much use as may serve *his* client, who of course, according to the foregoing rule, is *his* only object. No wonder that friends who have expected in a trial of this sort to see some woman's innocence made "clear as noon-day," are disappointed by the inexplicable withholding of facts which would have established that innocence beyond a doubt; or astonished at the want of counter-accusation against one whom perhaps they *know* to have been the worst of husbands. No wonder that, as Lord Brougham stated to the House of Lords, "the consequence not unfrequently is, that the character of the woman is sworn away," and that instances have been known in which, by *collusion* between the husband and a pretended paramour, the fair fame of the wife has been destroyed.*

* By the Scotch law, this injustice is obviated; the *first* process being against the *woman*, and the *second* against her supposed paramour. By this arrangement, (which exactly reverses the English practice,) the wife is afforded a fair opportunity of defence; and the temptation afforded by the hope of vengeance, or heavy damages easily obtained, is done away with. By the Scotch law also, a woman *can* obtain a divorce which enables her to marry again; though in England she cannot.

But even this injustice, gross as it is that a woman should be virtually tried and virtually condemned, while she is in fact deprived of the power of rebutting the slanders brought against her, even *this* injustice will not be held by women to equal that which they endure with respect to their children. A woman may bear cheerfully the poverty which anomalies in the laws of property may entail upon her; and she may struggle patiently through such an unjust ordeal of shame as Lord Brougham described; but against the inflicted and unmerited loss of her children she *cannot* bear up; that she has not deserved *that* blow, only adds to its bitterness: it is the master feeling of her life; the strong root of all the affections of her heart; and, in spite of the enumeration of every real or fancied grievance incidental to her position, she will still hold *that* injustice to stand foremost, distinct, and paramount above them all. She is *not* left to the exercise of despotic power on the part of her husband as regards property, for the law compels him to provide for her; she is *not* left to his despotic power in the matter of personal violence and cruelty, for she *can* obtain a divorce, though it be only a divorce *à mensâ et thoro*. It is in the single point of *her children* that she is *entirely* without remedy: it is in the single point of her children that her innocence or her ill-usage avail nothing: how then can *this* be rated with instances in which it is expressly understood that she *will* be protected if she can prove herself blameless and ill-used? I do not say *that*, in spite of this understand-

ing, there may not be very many cases of great injustice and suffering in these other instances, which the law cannot or does not touch ; but I assert that it is not *intended* or *admitted* that women shall be without remedy in these cases : on the contrary, there *is* an attempt at protection ; and there is *no* attempt at protection in such cases as would come under the Infant Custody Bill.

The principal objections which have been urged against establishing such a power of protection as would enable separated mothers to appeal successfully to courts of law, are as follows :—

I. That it would encourage and increase separations between married couples, by removing the great check which the knowledge of the loss of her children at present imposes on the wife.

II. That it would be impossible to carry such a measure into execution from the difficulty the courts would have in deciding domestic quarrels, and the determined resistance which would be made by fathers to legal interference in such matters.

III. That the result of access (if it could be enforced against the will of the father,) would probably, if not certainly, be the abduction of the children, whom the mother would thus have an opportunity of carrying away.

IV. That as the decisions would be grounded on affidavits made by the suffering party, it would afford a temptation to perjury ; and that a woman who was *guilty*, though not *convicted* of misconduct, might obtain access by these affidavits.

V. That it will render reconciliations less probable.

VI. That it will disturb the education of the children under the father's exclusive care.

There are other, more technical objections, such as the number of judges who were to *have* this power of decision; which Lord Lyndhurst met, by stating it to be his intention to confine the power to the three Equity Judges. These I shall pass over in silence, as being objections merely to the *form* of the measure of protection; and proceed to review in order those which are against the *spirit* of such a measure.

I. The first objection, namely, that **ALLOWING ACCESS WILL ENCOURAGE SEPARATIONS**, by removing the check which the knowledge of the loss of her children has hitherto imposed on the wife, is easily and decisively answered. That check cannot be said to be *removed* which never existed; and it is certain that so far from women in general being aware, that by separating themselves from their husbands they also eternally separated themselves from their children; the general impression was (not only among women, but among two-thirds of those who are now called to legislate upon this question), that *until seven years of age* the mother could claim the sole custody of her infant, and that after that age circumstances would regulate her intercourse with it. Till the painful disclosures consequent on the discussion of this Bill, were made; it never was publicly known or understood that the father had a right to deprive his wife of her infant

children at any moment, and for any cause ; it never was publicly known or understood, that infidelity and brutality on the part of the husband, and blamelessness on the part of the wife, made no difference in the decisions of courts of justice : it never was publicly known or understood, that in this free country, a man could take his innocent legitimate child from his wife, and give it to the woman with whom he was living, and that the English law, the law which boasts “ a remedy for every wrong,” —the law of the country which piques itself on the protection of the oppressed — gave that mother no redress, but left her child in the custody of its father’s mistress.* Women have hitherto imagined (naturally enough), that if they could prove they had been faithful wives and careful mothers ; if they could prove that the fault of separation was not theirs ; if they could prove that it was merely from vengeance, from interest, or to gratify the caprice of some unhallowed object of attachment, that their children were taken away, the strong arm of the law would interfere to protect them. This was believed in error and in ignorance ; but that it *was* believed, is sufficient reply to those who talk of the law as it exists having been a check against separations. The very last case which was decided,† was, under this

* Vide the case of *Skinner v. Skinner*, (9 Moore. 78,) which will be hereafter more fully referred to in these pages.

† *Greenhill v. Greenhill*, where the husband was proved to be living with a woman of the town, and the wife irreproachable. This case will also be referred to hereafter.

belief, carried by the appealing mother from Judge's Chambers to the Court of King's Bench, and from the Court of King's Bench to the Court of Chancery, still imagining that *somewhere* the power to protect must exist. She knew nothing of the supposed "check" which was to be held *in terrorem* over her, to compel her to submit to the coarse infidelities of her husband, or to part for ever from her infant children; she knew nothing of the operation of the law which aided the oppressor to tyrannise, punishing the innocent and letting the guilty go free. Simply imagining that her own blamelessness and affection for her children, (to whom *she* had been acting a mother's holy part, while their father was living with a wanton,) would suffice to establish her claim to protection, she appealed to the English law; and appealed in vain.

The same degree of very natural ignorance has been shewn in a multitude of other cases; proving the same impression (that the law would protect them,) to exist in the minds of most women conscious of their own innocence; nor can it be affirmed that even to members of the legal profession it appeared clear that this "check to separations" existed *unconditionally*; since whatever encouragement gentlemen of the long robe may be supposed to give to litigation, it will hardly be asserted that they brought forward and argued these several cases in the different courts, without believing that the particular circumstances adduced *might* obtain a decision in favour of their

clients. The doubt appears to have been *where* the protecting power existed, not whether it had any existence at all : and if we may judge by the record of published cases, this doubt seems to have obtained with judges and barristers, as well as with mothers and wives. Lord Wynford, (one of the bitterest opponents of Serjeant Talfourd's Bill,) when as Chief Justice Best, he decided the case of *Skinner v. Skinner*, referred to the Court of Chancery as having a power superior to the Court of King's Bench, and affirmed that the Lord Chancellor might, accordingly, under certain circumstances, control the right of a father to the custody of his child, leaving the doubt merely as to *what* circumstances would justify such control. This appears to have been the general opinion ; and we are to presume that when women, after failing in their appeal to the one court, were encouraged to proceed with a fresh suit in the other, it was with the honest expectation, on the part of their legal advisers, that there was at least a *possibility* of eventual success. That these expectations were frustrated, in no way touches the present portion of my argument, which merely goes to prove that a general error of belief existed as to the power of the courts (one or other of them) to protect separated mothers ; that women did not know or admit that the possession of their children, or intercourse with them, depended solely on their husband's caprice ; that lawyers did not know or admit such to be the case, without exception of

circumstances ; and that consequently the “check” so loudly cried up by the opponents of the Bill never could have existed, and never did exist.

Whether that species of divorce commonly called “separation by mutual consent” should be permitted or countenanced by the English law, is another question ; but being permitted, the “checks” (and they are many) which combine to make such a divorce undesirable, remain precisely as they did before the question of Infant Custody was ever touched upon or explained.

Those checks are already *all on the woman's side* ; and the principal among them was, is, and always will be, the loss of reputation which this step entails ; for it is certain, that let the husband be ever so much to blame, an implied doubt as to the circumstances, and the contrasting accounts of parties mutually opposed, leave a slur on the woman's character from which she never stands thoroughly clear. Her acquaintance among her own sex, with the exception of a few of the more noble-hearted, draw off from her ; for it is as much the nature of women as of deer, to turn upon the wounded one of their herd. Her enemies avenge past offences, under pretence of her doubtful position : every one who has a stone, which waited only the hour of helplessness to be flung, casts it with impunity ; and let her struggle as she may against temptation ; let her endeavour as she will to propitiate the more indulgent of her self-constituted judges ; let her do her best, in a situation at once the most helpless and the most responsible a

woman can fill; so far from "escaping calumny," she shall endure so much of it, that it would seem as if all other women proved the degree and strength of their own virtue by the bitterness with which they assailed and doubted hers. It is *this* which has been the great "check" to separations—and long may even the injustice of society, the malice of some women, the real principle of others, and the timidity of *all* in matters of reputation, exist to so beneficial an effect. There is no doubt or dispute as to the propriety, nay, the necessity, of discouraging and discountenancing separations between man and wife; but there is no need to discourage them by false arguments in support of oppression and injustice.

And before that portion of the subject be closed, which relates to the supposed checks against separation, it may be proper to remark, first, that it does not follow, because a separation takes place, that it was *voluntary* on the woman's part; and, secondly, that where it is voluntary, *it does not follow that she is in fault*. Where it is *not* voluntary; where the husband, to use a Scriptural phrase, "puts her away," the wife certainly *may* have deserved it; in all probability she *has* deserved it. I am not declaiming against a class, or supposing that because the man is the stronger party he is necessarily a tyrant; I do believe that in men (and in women also) the general rule is for good, and the exception for evil; and therefore I admit, that in this sort of compulsory parting, the strong presumption is, that the woman has deserved her

fate. But it is *possible* that she may *not* have deserved it; it is possible (as recorded cases prove) that she may have been the victim of some lawless attachment formed by her husband, and of every species of brutality and ill-usage, ending in desertion. Shall such a woman have no redress, because it is also true, in other cases, that generous and excellent men have found their honest attachment repaid by perfidy, and have been *compelled* to put their wives away?

On the other hand, where the separation is voluntary on the part of the woman, perhaps determined by her in defiance of her husband's desire that she should remain under his roof, though it is possible also in *this* case that the woman may be unworthy, it is less probable. Women guilty of misconduct are not, generally speaking, the most eager or willing to part from their husbands. There is nothing so cowardly or so cautious as vice. It is the woman who is or imagines herself aggrieved; who is stung by the frenzy of jealousy, or bowed under the violence of tyranny, who comes to that rashest of all rash conclusions, "I will bear this no longer;" who insists on a separation, and quits her husband's house.

It is the woman who is conscious of her own innocence; who fancies she will obtain the sympathy of others because she has suffered, and that she will still preserve the respect of "the world;" who leaves the ark of her home for the waste of its waters. A good woman may take this step and think herself justified, just as a bad woman may dread taking it, and prefer

remaining, like a coiled snake, basking in the warmth and protection afforded her by the shelter of her husband's roof, and the confidence of his trust, and happy in being able by that means to hush the world's slanders into a whisper so low that few dare echo it ; a whisper so low that the husband from whom she is not " separated " shall never hear it. There are checks of all sorts against separation : the woman who tries it, only lengthens a chain she cannot break, and condemns herself to endure *alone* and in partial disgrace, the evils of a lot whose unhappiness was before cheered by the esteem of friends and the welcome of society. But to declare that henceforward it shall be understood to include a bitterer suffering ; that a woman shall not dare under any, the most grievous circumstances, to part from her husband, except on penalty of losing her children ; to say that even her involuntary separation from him, in cases of his desertion for the sake of a mistress, shall be equally visited on *her* by the loss of her children, is not to create a chance of making women better, but to afford a certainty of making men worse. The checks upon *women* are very great : eternal disgrace for infidelity, partial disgrace for that which may not even be their choice, namely, the separation from their husbands. But where are the checks upon men ? Who visits upon *them* the grossest inconstancy ?—is it not rather a jest in society ? There is one check *possible*, and it would be found precisely in such a Measure of Protection as is now

under consideration ; precisely in such a degree of power as I trust to see ere long established in your Lordship's court. So far from being a check *the less* against separations, it would create one check *more*, and that on the side where hitherto there has been no check at all.

I have taken this objection somewhat at length, because it is the most plausible that has been brought forward ; it was one also mainly relied on by Sir Edward Sugden, whose opinion justly carries much weight with it ; but who reasoned in this instance as a *lawyer*, from his own knowledge of the law, without considering that the check he presumed to exist depended not on the *state of the law*, but on the woman's *knowledge* of the state of the law ; that women in general are, from their confined education in these respects, especially ignorant of the laws under which they live ; and that he would not probably have found, before the public discussion of this subject, *one woman in a hundred* who did not believe particular circumstances would enable the Court of Chancery to decide her claim to the custody of her infant children.

II. The next great objection urged is, that granting the justice and expediency of such control and power of protection ; granting that Serjeant Talfourd's Bill, or a similar measure, were passed, IT WOULD BE FOUND IMPRACTICABLE IN ITS OPERATION, for several reasons ; first, because the difficulty of deciding in domestic quarrels, and between conflicting state-

ments, would be so great as almost to amount to an impossibility : secondly, because the decision would be useless, on account of the determined resistance which would be made by the father to any legal interference with his right of custody, and which would lead to men rather submitting to be sent to prison for contempt of court than permitting their separated wives to have access to their children. This is another very favourite argument with the opponents of the Bill ; and yet there is a very simple and decided answer to it ; namely, that such control *has already* been exerted on other accounts ; that litigation *has* taken place on the subject ; and that neither the decisions, nor the carrying those decisions into effect, were found to be impracticable. Why should it be more difficult to interfere with the children of Mr. Smith or Mr. Tomkins, than with the children of Mr. Wellesley and Mr. Shelley ? * Why is the wrath and resistance of these hypothetical fathers to be so much more terrible than in the real cases on record in our courts of law ? It would at all times be a weak and poor argument against establishing a law, to say that it will be difficult to carry it into operation ; and would apply with nearly equal force to most laws ; daily difficulties must and do arise in carrying the

* See also less celebrated cases of interference. *Whitfield v. Hales* (12 Vesey. 492,) where the Lord Chancellor appointed a guardian for the infants *in lieu* of their own father ; the case of *Blisset* (Lofft. 748) where the like was done, on the ground that the father's power is subordinate to the authority of the state ; and many others.

greater part of them into effect. But the law-giver has a sacred duty to perform towards the community, and if a law be just and necessary, he has no choice *but* to establish it ; his office is merely to provide such securities for its enforcement as the imperfection of human means will permit. We have no reason to expect greater difficulty for the future, than has been found in the past ; in the few cases recorded, the fathers have *not* submitted to be imprisoned for contempt rather than obey ; and the court has *not* doubted its ability to decide, though the decisions were made of course on the same species of evidence as would be given under this Bill, namely, the testimony of the family and friends of the parties at war.

Nothing can shew more strongly the degree to which prejudice warps and perverts the judgment of the most intelligent minds, than the very contrasting arguments of the objectors to this Bill. No sooner has one objector shewn, in the most eloquent and forcible language, that the result of the Bill will be that our "prisons will be crammed" with fathers lying in contempt, than another starts up, and with indignant vehemence declaims against the folly of altering a law merely to meet "one or two solitary instances of oppression." The first objector adds, that the mother will never obtain access : the second takes the access for granted, and the abduction of the children as the certain consequence. Both arguing against the Bill, but on different grounds, uphold, even in their very opposition, one of these two opinions : either that the cases of oppression *are* rare and

solitary instances, or, in other words, that the majority of men have already (guided by principles of natural justice) agreed to act as if women *had* some claim to access ; *or*, that there *are a multitude of grievous cases of injustice* which would be brought forward by the operation of the Bill. Serjeant Talfourd was taunted in the House of Commons with only producing half a dozen cases in all, to shew the necessity of a change in the law. If the taunt be founded on truth, then the evils described so graphically will not ensue : by the decision of a few solitary cases our prisons will *not* be crammed with prisoners for contempt ; the whole order of society will *not* be subverted ; the result will *not* be “frightful to contemplate.” “In nineteen out of twenty cases,” says the objectors, “access is already allowed.” Why, then, the twentieth case is all that threatens danger ; the small minority who have refused to consider with the great majority that a mother should be allowed to see her child, alone come under the provisions of the Bill : and do not let us forget that this small minority, in our recorded cases, was composed of men, base, ferocious, and unjust ; men, who to force a testamentary disposition, to gratify a mistress, or to poison the arrows of their vengeance against a helpless woman, claimed, like Shylock, the pound of flesh *next the heart* of their victim. It was not a minority of justly incensed husbands refusing an undeserved boon to offending wives ; it was a minority of fierce men—adulterers—men whom the great laws of society could not touch, whom the opinions of the majority

could not influence ; but who were, nevertheless, a pest to that society, an object of detestation and horror to that majority, and proper objects for such control as the Bill of Custody would give.

But whether the instances of injustice which this Bill is intended to remedy be few or many, one thing is very certain, namely, that after the passing of this measure the number of those instances will be diminished. It was suggested in your Lordship's brief notice of the Bill, when introduced to the House of Lords by Lord Lyndhurst, that if the husband were to feel there *was a Power of Control* residing somewhere, he would probably not compel the wife to have recourse to an application for its exercise in her behalf. In that sentence lies the secret of more than half the benefit which such a measure would confer upon society. *The knowledge of the existence of the law* would do more than the exercise of the law itself. A man who feels that nothing opposes between his angry will and the object of his anger, will act rashly, suddenly, and probably with great injustice ; for it is a grievous temptation to the best of men to have such an uncurbed power : but the man who knows that he is responsible for the manner and measure of his vengeance, will pause ; he will consider within himself whether his wrongs will be judged by those to whom he is responsible, as *he* judges them ; and this very effort to place himself as it were in the mind of another, will produce a more dispassionate view of the subject. Again ; a man who *knows* his conduct to be base, tyrannical, and unjust, will not

voluntarily expose it to public censure, but will rather, through the mediation of friends, make an arrangement with his wife respecting their mutual offspring. And here I cannot help expressing my astonishment at the tone adopted by some of those who desire to prevent the measure being carried. Any one would suppose, from the manner and substance of their arguments, that the Bill ran thus : —“ And be it enacted that from henceforth all wives separated from their husbands shall, on application to a judge, obtain an order of access to their children, in case the husband shall be opposed to such access ; *whatever may be the motive of his opposition.*” In lieu of this, what does the Bill, in fact, propose ? A power of appeal, by tedious forms of law, on the part of such women as are likely *to be able to prove* their separation from their children to be a gross injustice. Will women who know that separation to be a just infliction, venture on such an appeal ? Can it be believed that a woman will volunteer affording her husband an opportunity of proving her misconduct (which may still remain unknown), by forcing him into the retaliation consequent on such an appeal ? Is it probable—is it natural, to expect that a woman who is conscious that had fair justice been done, she might have been divorced, will so far presume on her partial escape, as to expose herself to a fresh ordeal of scrutiny and accusation ? Are the cases on record during these past years, when women believed they *had* the power of appeal, cases where even a doubt or slur lay on the woman’s character ? Were

they not *all*, on the contrary, cases of absolute and terrible injustice and cruelty inflicted on innocent wives and devoted mothers? Does not the fact of their being so, afford a strong presumption that, among separated women, none appealed who did not feel secure in their own blamelessness, and confident—*too* confident of justice being done them? Does it not also afford a like presumption that future appeals would only be made on the same grounds, since no greater power of appeal can hereafter be given, than women have *imagined* they already possessed? I think the past, in such a case, may be taken as a fair sample of the future. No party, however bitterly they might feel towards another, would engage in a tedious and expensive struggle, *knowing* the probable result to be failure and disgrace. The bad man will not try it, against an injured wife, *when he learns there is a controlling power to be exercised*; the bad woman will not try it, against a justly severe husband, only to incur additional mortification and shame. And there are others, besides the husband and wife, over whom the knowledge of the existence of the law would exercise a most salutary influence. I allude to the family relations on both sides. It is well known that feuds frequently arise between mothers-in-law and their son's wives, sisters-in-law and their brother's brides; and this for obvious reasons, though it may at first sight appear strange and unnatural. The son and brother goes out into the world, and selects a wife to please himself; he brings this *stranger* (who is, and ex-

pects to be, all in all to him,) into the bosom of his own family : persons utterly dissimilar, perhaps, in every thought and feeling, educated in opposite opinions and prejudices, are thus suddenly forced into companionship and intimacy ; a natural and affectionate jealousy of the husband, son, and brother, who is the common link between them, diminishes the small portion of indulgence which, under such circumstances, each might be willing to accord to the other ; they become mutually disagreeable ; the bride wonders how her “beloved Henry” could have sprung up among such odious people ; the family marvel at his rashness in marrying so unamiable a person. All this dissatisfaction is increased if the bride be a wit, a beauty, a fortune, (though *that* is generally the safest quality she can possess), or in any way entitled to give herself a few of those pretty airs so common in a bridegroom’s “idol.” Before time, and the good sense of some one of the parties concerned, has smoothed matters down, the bride has probably complained to *her* family of the treatment she receives from her new relatives ; and the husband, on his part, has become aware that his wife is by no means viewed by his connections with the same partial eyes as his own. The general effect is to draw the husband rather from his own family into his wife’s for a time, partly because a woman being more bound to her own home than a man, *she* still seeks and prefers the society of her own relations ; and partly because he is averse to see one whom *he* admires and tenderly loves, unwell-

come, where he especially intended and expected her to be preferred. All this does very well till (if ever) a serious quarrel takes place between the husband and wife. In that quarrel the two families instantly enrol themselves with a bitterness of animosity which no one who has not witnessed it would believe, and which frequently far outdoes the feelings of resentment burning in the hearts of the two "principals :—" the husband is taunted into frenzy ; the wife is encouraged to defiance ; the smallest concession on his part is treated by his family as folly, weakness, dishonourable submission. The wife finds she has to struggle not against *one* angry man, but against a regiment of angry men and women, to whom perhaps the only real offence of her life has been "that having eyes he chose her," and that she, (being young and pretty, and he much in love,) exercised at one time more influence over him than father, mother, brother, or sister, "For, for this cause shall a man leave father and mother, and cleave unto his wife."

Now, that influence is weakened, and the case is altered ; the arrears of many years have to be paid up ; old heart-burnings and jealousies are to find vent ; the opportunity of humbling and tormenting is not to be lost. Bewildered by an enmity which she considers causeless or disproportioned to her offence, the wife becomes doubly exasperated against her husband for thus abandoning her to the united efforts of those friendly foes. She considers there is a species of cowardice in thus backing his

own anger by the petty torture of their assistance. Scorn and bitterness mingle with her indignation and previous sense of injustice ; his mind receives the re-action of these sentiments, and the busy whispers, or open accusations of the members of his family, put the finishing stroke to the quarrel. Nothing can follow but “war to the knife ;” the wife may, and probably does, struggle against this increasing influence, but in vain : the husband may, now and then, feel some relentings, but equally in vain ; husband and wife are parted ; *he* is once more the son and brother, and *she* the *stranger*, whose presence was so little desired. Trivial circumstances may add to the anxiety of the husband’s relatives to produce this end ; sometimes a residence with him would be advantageous ; sometimes a fortune is to be shared ; sometimes it is the direct interest of family connections to obtain possession of, and influence over, the heir to the family estates. Every thing adds to the wife’s misery, and to her exasperation : if as in the last case, there are children, and those children are wrested from her to be placed with the husband’s relatives, of course the exasperation is increased tenfold. If, as does frequently happen, the family exert themselves to prevent even communication between her and her children, it is increased a hundred-fold. Individual examples are thought to be unfair, are thought to be tedious ; and a woman’s story of suffering is never above *half* known, for the very fact of the publicity of her wrongs is counted to her for disgrace ; but could even a portion of the anecdotes of strange and

morbid spite, of deliberate persecution, aye, even of personal violence on the part of husband's relations to a wife at war with him, be publicly known and related, it would be admitted, that the additional "check" is required, *not* for the wife (who, as in one of the recorded cases, may be married at seventeen, deserted for a mistress at five-and-twenty, and then told that *though her marriage is indissoluble*, the offspring of that marriage are no longer her's,) but for the husband, whose bad passions are fanned to fury by those who surround him ; and for those whose desire and whose interest it is, to keep alive the flame. The most material benefit that could be rendered by the Bill. would be the check given, by the possibility of an exposure of the *real motives* of these "assistants" in a quarrel, and the hazard of exposing themselves *in vain*, as far as injury to the woman was concerned. Husband's relations would be infinitely more loth to interfere, and more slow of advising extreme measures, if the fearful impunity with which all tyranny may now be exercised, were done away with ; and thus, by non-interference on their part, or perhaps an interference for good instead of evil ; an interference, (for the husband's credit's sake,) to obtain a more decent termination of the quarrel ; a still further reduction of the number of instances in which appeals might be made, would be the result of that knowledge of the *existence of a Power of Control* alluded to by your Lordship.

III. The third objection made, is, that THIS EN-

FORCED ACCESS WOULD LEAD TO THE ABDUCTION OF THE CHILDREN. "What," said Lord Brougham, "is to be the security, that the wife will not run away with the children? How is this to be guarded against? To what place, and under what circumstances, are the visits of the mother to be made? Is an officer of the court to be sent *with* the mother, to be present at these interviews, and prevent evil consequences, or what is to be done to avert either abuse of the husband, or abduction of the child?

As usual, the answer to the objection is to be found in the very speech of the objector: for, in contradicting Lord Lyndhurst as to the exactness of his statement respecting the power exerted by the Courts of Chancery, Lord Brougham explained that, when the court had that guardianship of children and there was profligacy on the part of the father, "*the Judge would take care that the mother should have sufficient opportunities of seeing them.*" So then, it appears the fear of abduction does not exist in certain instances; that the Court of Chancery, when it has the wardenship of infants, takes care that the mother *shall* have sufficient opportunities of seeing them. What should hinder the same precautions which are adopted by the court in these instances (if indeed any precautions are thought necessary) from being adopted also in these imaginary cases of appeal? How comes it that the court can safely allow the wives of ill-conducted husbands to see their children under one set of circumstances, and not under another? Why

should this power of permission exist only for the mothers whose children are possessed of property enough to make them wards of chancery ?

Nor is it otherwise than a libel upon women, and a libel upon common sense, to assert that mothers will be *more* likely to abduct their children when they are permitted to see and hold communication with them than when they are excluded from such intercourse. The temptation to abduct the children, lies with the woman who is driven to desperation by her inability to see or gain intelligence of them ; who is writhing under the infliction of a compulsory separation from them, which the law cannot relieve ; who knows *she has but that one alternative*. Obvious and most serious reflections must oppose the temptation in all cases ; for few women have any separate property on which they could maintain their children, or secure them an after independence ; consequently they must be reluctant to injure the future prospects of the infant : nor can a woman, in her conscience, view such a step in any better light than as a retaliation of wrong for wrong. It consists with my personal knowledge, that in one case where the abduction of the children would have been attended with every facility, the mother was withheld from attempting it by these considerations, and I have no doubt the same feelings would influence many women against such a step, even with a consciousness of the present state of the law. Why then should it be supposed that the chances of abduction would be increased by lessening the

temptations which lead to it? by increasing the protection afforded in cases of injustice? by making it possible to obtain by fair and equitable means what hitherto could only be achieved by stratagem or violence? by creating a power of control which would henceforth make it *unnecessary*, as well as rash and imprudent, for mothers to resort to such methods for securing intercourse with their children? I believe the exact contrary of what is thus boldly asserted. I believe that not only the temptation to abduct the infant would be in a great measure obviated by such a measure; but that the just authority of the husband could by these means be still exerted over a separated wife. As it would be her interest, if she really cared for her children, to watch her conduct, on the proof of the blamelessness of which her claim to access was to depend; so it would be her interest to make any personal sacrifice, to comply with any expressed desire on the part of the father of those children. What was the state of facts in a case already referred to—the case of Mrs. Greenhill? As long as that young wife imagined her appeal could be favorably answered in the courts; as long as she believed her access to, or remaining with her children, was a thing subject to legal control, and conditional on circumstances, she made every offer which anxiety could suggest: she expressed herself willing to obey any injunctions, to submit to any restrictions, to live in any part of England her husband might prescribe, or to remain with her own

mother, at whose house he should visit the children as often as he pleased. It was not until in Judge's Chambers, in the Court of King's Bench, and in the Court of Chancery, the claim of the innocent party had been rejected, and the right of the guilty party confirmed : it was not until her husband had obtained a writ of attachment, or sentence of *imprisonment for contempt of court* against her ; that bewildered by the palpable injustice of those decisions, and instigated by the energy of despair, she fled from England, taking her children with her. Can any one doubt that had the power of control existed, as it was supposed to exist, the abduction would not have taken place ? Can any one, who is not blinded by obstinacy and prejudice, refuse to believe that the *probable* results of a more favorable and just decision, under such a power of control, would have been the avoidance of a great public scandal ; the submission of the separated mother to a partial authority on the part of the father of her children ; the residence of those children among their natural relatives in their own country ; and perhaps (for such connections as the one formed by Mr. Greenhill are not very lasting), the eventual reconciliation of husband and wife, and a mutual guardianship of their mutual offspring. Was not, in short, the abduction of those children caused by the *want* of that very power which it is urged will give rise to abductions ? and is it not equally unfair and absurd to persist in inventing results for imagi-

nary cases, which the results in *real* instances exactly contradict ?

Moreover, there is no sort of reason why security should not be given, on the part of the woman, that no attempt should be made to remove the children from the custody in which they might be placed. It is the custom in the higher ranks of society, when a separation takes place, for relatives to become securities against the husband's future liability for the wife's debts, after a proper provision has been assigned her ; and it is to be presumed that some sort of control is exerted on the part of these relatives, and that the wife considers herself bound in honor to them, not to incur debts for which they have thus become answerable : why should not some plan of this sort be adopted also with regard to the children, and the wife be bound by her securities in the same way ? We have no right to assume that this check would be insufficient to prevent a mother from abducting her child : the Bill is intended to benefit virtuous wives suffering under unjust exclusion, and such women are not to be expected to shew such an utter dereliction of moral principle, as to make it impossible to bind them in this respect. One of the questions of the court might be, " What security can you give, that access, if permitted, will not be abused by an attempt to carry off the children ? " Though, as I have before said, if the court can *now* make the mother's access to children in its wardenship safe and easy, it is natural to suppose that it

could, with equal facility and safety, make arrangements for the same liberty, under the new power of protection, if once established.

IV. But, say the objectors, we do not admit that virtuous and ill-used wives alone will claim and obtain access : on the contrary, we believe that this Bill will create "DIRECT TEMPTATION AND OPPORTUNITIES FOR PERJURY ;" that the extent of false swearing in the necessary affidavits will be perfectly frightful, and that by means of such affidavits women of the worst conduct, but who have not been publicly convicted of sin, will be enabled to appeal, and perhaps to succeed in their appeal, for access to their children.

This objection is, at first sight, the most difficult of all to get over ; because no one can absolutely contradict it : no one can deny but that perjury may occur ; that there is a *possibility* of its occurring ; and a bare possibility of its succeeding. But why is this argument applied only to the legal appeal of a separated mother, when, if it has any force, it equally applies to *all* legal appeals ; to every case that can be brought before a legal tribunal ? It is *possible* that the concurrent testimony of several perjured witnesses may establish a forged will ; it is *possible* that several persons might falsely swear to an alibi in a case of burglary, and so acquit the housebreaker ; it is *possible*, (as Lord Brougham observed,) that a woman's character may be falsely sworn away by collusion between her husband and supposed paramour ; it is *possible* that a man shall swear, and get others

to swear, that a certain sum of money is owing to him which never was due, in order to cause the supposed debtor to be cast into prison. It is *possible* that the heirs of an eccentric man shall falsely swear, and get his servants to swear, that he is insane; and invent instances of his insanity. *All* these things are possible; and in rare instances it is to be feared that all these things have been done; (though not even in those rare instances always with success:) but because they *are* possible, are men to desist from appeals to legal tribunals? or are those who are really injured to be prevented from appealing, lest their case be founded on falsehood? Is the distribution of human justice to be at an end, because the judges are not like the all-seeing God, ("to whom all hearts be open,") but are obliged to make the best use they can of *imperfect means* towards the discovery of truth, and establishing of rights? How palpably absurd would it seem if a man were to argue, that as he knew for a certainty that a *thief* had been acquitted, (either by a flaw in the indictment, a defect of legal proof, or the false swearing of his companions,) he was of opinion that it would be better, safer, and more according to justice, that all persons accused of theft should be hung without trial, to avoid the future possibility of one who was guilty escaping that punishment? Yet this is precisely the same argument, in a different form, which is gravely listened to and considered, when it is affirmed that it would be better that *all* women should suffer without re-

dress, than run the chance of a bad woman obtaining access by perjury. The expectation of this great and difficult sin being committed, is not borne out by experience of the past ; the recorded cases of appeal having been those of women against whom their husbands advanced no shadow of accusation, and where consequently there was no necessity or chance of false swearing, the wives being precisely what they represented themselves to be ; *viz.* innocent and unjustly oppressed. And as I have already shewn, the experience of past is a better guide for the future, than lawyers will allow, because, though adverse decisions were given at intervals, *all women still believed they had power to appeal*, and continued in ignorance of the grounds on which those decisions were made.

Successful perjury is by no means a common thing, especially where it is necessary to bribe other persons also to perjure themselves ; there is generally some discrepancy or contradiction in statements made with the cowardice or desperation of vice, which betrays the party engaged in such an attempt ; or some key-stone of evidence is forgotten, for want of which the whole edifice of falsehood crumbles into ruin. But, successful or unsuccessful, there is no *greater* chance of perjury in the cases which would come under the Infant Custody Bill than in any other disputed legal matter (unless, indeed, we are called upon to believe that utter recklessness, irreligion, and false swearing, abound more among educated women than any other class of her Majesty's subjects). Consequently the

same means, neither more nor less, which are used to discover and decide the truth in other cases, are at the option of the Judge who is called upon to award or withhold on certain grounds a mother's right of access to her children.

It has, I know, been the opinion of some, that the most simple and efficient guard against the possibility of an unworthy woman obtaining, by dint of perjury, the boon intended for the innocent, would be to confine the relief proposed by the new measure of protection, to such women as have been able to obtain a verdict of divorce against their husbands for adultery or cruelty in the Ecclesiastical Courts; and certainly it would be well if such women were entitled as a *matter of course* to that relief which in other cases should be a *matter of consideration*. But to bar all separated wives from relief who have *not* obtained this divorce *à mensâ et thoro*, would be to deny justice to the great majority of women in that position. Among the five recorded cases quoted by Serjeant Talfourd, as proofs of the gross hardship and injustice of the law, there was only *one* woman who had divorced her husband; the rest were separated "by mutual consent," as it is termed, or had been deserted. The difficulties which are presumed, and asserted to exist, when the husband desires to give legal proof of the infidelity of the *wife*, are obviously increased a hundred-fold, when it is the wife who desires to give legal proof of the infidelity of the *husband*; for whereas the misconduct of the wife is acted in her own

home, under the watchful notice of her own household, and witnesses may be found to prove her guilty (if she *be* guilty) under the very roof that shelters her; the misconduct of the husband may be perfectly free from observation, and impossible to obtain evidence of; a woman cannot dog or trace her husband's footsteps when he leaves his home, nor can she (even did the torments of jealousy tempt her to such baseness) send menials to watch the haunts of pleasure where she presumes he may be; or obtain proof (without the greatest difficulty) from those who surround the partner of his guilt. The wife of a truly honorable and anxious husband can hardly have a lover, but sooner or later the husband shall be made aware of her crime, and put in possession of proofs which will avail as legal evidence; but the husband himself may keep a mistress, or indulge in coarser inconstancy, and the wife (though morally certain of the fact) be yet utterly unable to produce witnesses *to prove it*. In cases of cruelty, the chances are still less in favour of the woman obtaining the divorce sought by her; for the law, to guard against the reception of frivolous and vexatious complaints, requires very strong evidence of the husband's cruelty, and that it should be cruelty such as may be supposed "to endanger life or limb;" which (as few men offer personal violence to their wives in the presence of by-standers, and her own single evidence is of no avail,) generally fails of absolute proof. Add to this the absurd law of *condonation*, which takes

away from the woman who has forgiven acts of cruelty and returned home, the power of complaining of them afterwards ; and there is scarcely a chance of such divorce left ; for I suppose nine women in ten, struggling against their resentment or terror of a violent husband for the sake of their children and reputation, do, at the entreaty of the husband, or by the advice of friends, return to their homes after complaints of cruelty, and so *condone* the past. On these accounts it would be very hard and very unfair to confine relief to those who had been enabled, by concurrent circumstances, to obtain a legal verdict against their husbands.

And here I cannot help remarking, that the virtuous horror and indignation expressed at the bare possibility of an unworthy and ill conducted *woman* obtaining access to her children, forms rather a curious contrast to the eager bitterness with which the general right is upheld, which gives a worthless and ill-conducted *man* the *entire custody* of his children. The idea that a sinful *mother* should be allowed to look upon, speak to, or caress the children of an injured husband, was monstrous, was incredible, and called forth eloquent and proud rebukes on the occasion of the discussion of the Bill : but the idea that a sinful *father* should in any way be interfered with, or prevented from disposing of his children as best suited his vengeance or his caprice, was quite incomprehensible to the defenders of his "*right*." Truly this is straining at a gnat and swallowing a

camel ; to be so outrageously shocked at the sinful *female* parent seeing her child at chance intervals. and to be perfectly contented that the sinful *male* parent should live with it, have authority over it, and never part from its society ! Verily, it is *even* justice, which provides that the weak party who has erred, shall forfeit every claim of nature, and be held to contaminate her child even by looks and words ; and the strong party who has erred, shall have precisely the same enjoyment of rights and privileges as before ! Vice, in the shape of the miserable and degraded mother, is viewed with stern and merciless abhorrence ; but vice, in the shape of the husband's mistress, is contemplated with indulgence, and made welcome to such share of the young child's society as the father may allow, which, as we have seen in at least *one* instance, was *the entire charge of his wife's infant*.

Let those who sounded this false flourish of trumpets as an alarum or warning of what *might be*, (by chance, and through successful perjury,) contrived under the altered law ; consider what *is* and has been done in the open face of day, under *the law as it now stands*. Let them set against the *hazard* of some bad woman obtaining access, the established *certainty*, that bad fathers have wrested their children from blameless wives, to force a disposition of property in their own favour, or to gratify a brutal spirit of vengeance ; that to a blameless mother, her diseased and dying child has been refused ; that from a blameless mother's care her

innocent offspring has been transferred to the home of a wanton. Let them set this proved and recorded *certainty* against the imaginary and invented *chance*, and I think even the loudest among the class of objectors will scarcely persist in affirming that the opportunity afforded for perjury (in this, *as in all other* legal evidence,) should be deemed a valid ground of opposition to the Infant's Custody Bill. The outcry on this point is of the same nature as that which was raised upon the possibility of fathers who might resist the law being imprisoned for contempt. It was thought frightful and atrocious that a *father* should undergo such a sentence; but the fact that the *mother* at present is the person liable to imprisonment for refusing to give up her children, was quietly passed over, as if it did not signify what injustice *she* endured. A petition was then before the House of Commons from Mrs. Greenhill, whose husband obtained against *her* a writ of attachment, or sentence of imprisonment, for refusing to give up her three female infants after the discovery of his illicit connection; and a sentence of the same nature had been passed on another woman the day the Greenhill case was decided.

The two last objections—namely, that the relief afforded by such a measure of protection WILL RENDER RECONCILIATION LESS PROBABLE; and that the enforcement of access would interfere with the guidance and education of the children—may be dealt with more briefly.

The assertion that it would render reconciliations less probable, is an assertion and nothing more. It is in fact affirming, that a woman is more likely to be soothed into a gentler state of feeling by extreme ill usage, than by obtaining partial justice; that while her husband grinds her to the dust, and inflicts upon her the heaviest of human sorrows, (to wit, the loss of her children,) she is more likely to wish to return to him than when he shews compelled mercy. Granting that this were so; granting that in some cases, by inflicting a certain degree of extreme misery on a woman, she would be brought to yield and return, (as by the application of the rack in former days, a prisoner might be brought to yield and confess,) how does that further the prospect of a reconciliation unless the husband *also* shared in the wish that she should return? What motive would there be in some of the cases contemplated by the Infant Custody Bill, to induce him to share in that wish? As the law stands, he has the power, first, to take a mistress; secondly, to put his wife away; and, thirdly, to claim and take possession of his children. Having arranged all this as best suits him, without interference or obstacle, where is the argument that should make *him* reverse his plans and take back the wife of whom he has got rid? *He* suffers neither sorrow nor inconvenience from the state of things; on the contrary, he is in every point following out his own inclination; why should *he* yield? This is *one* class of separated husbands, with whom recon-

ciliation would not be a whit the more probable because the woman was denied legal redress.

The other class would be those husbands who more closely followed the argument of the objectors; and actually considered the custody of their children as a *means and instrument* in their hands; as an inducement to the wife to return to her home, however unhappy; as a pledge, the forfeiture of which can be held *in terrorem* over her to prevent her resisting any violence or any insult. With women of a weak and timid disposition, or of an irresolute and passionate spirit, joined with strong affections, this might succeed; and if by reconciliation be meant simply the return of a woman to her husband's house, there is no doubt it might be effected in many instances; though in others, where the woman shewed more fortitude and nobleness, and at the same time more steady resistance of wrong, this permission by law to *rack the heart* instead of the body, would be found utterly to fail of its purpose. But the question is, on what principle the legislature should give a man this power to torment; this power to say to his wife "You shall bear blows, you shall bear inconstancy, you shall give up property, you shall endure insult, and yet you shall continue to live under my roof, or else I will take your children, and you shall never see them more?" Or, on what principle, if his victim leaves him, he is to say with hard and insolent triumph, "She shall return to her home, or weep her heart out; I make no promise—I admit no man's right to

interfere—I care not what truth there may be in her complaints of my conduct; all I say is, that either she shall *return*, or she shall never again see or hear of her children.” Can the return under such circumstances be deemed a “reconciliation,” or even a voluntary and spontaneous act?

That reconciliations do occasionally take place between separated couples, and that many more would take place were it not for false shame or false pride on the part of one or other of the separated parties, and the eternal interference of friends and relations, is very true. But it is greatly to be doubted that any of these are such cases as would come under the Infant Custody Bill; or, if they were, that reconciliation would be less probable, because one of the preliminary steps towards cessation of hostilities was already taken, in the partial admission of the mother to her child’s society. This objection is founded on the notion that if a woman could see her children *without* returning to her husband, it would not be *worth her while* to return; but this is an argument based on very false notions of the degree and strength of a mother’s love. To be allowed to see a little child occasionally, and be satisfied that it was apparently doing well, might satisfy a *father*, because, at the best he does little more in his own home: but no *woman* who could be *with* her children, would be content merely to *see* them: the permission to visit them might be an indulgence and relief in comparison of being utterly excluded, but it never could be held to

be the same thing as living with them. Sir Edward Sugden, in his masterly, though somewhat lawyer-like speech, in opposition to the Bill, admitted that "he believed men had very little notion of the intensity of a woman's affection for her children;" and certainly they could not shew more ignorance of its intensity than in the argument before us; making it appear one and the same thing, whether a mother obtained leave to visit her offspring so many times a year, or dwelt with them all the year round. A man would be very much astonished if he were told of a young wife to whom he was deeply and devotedly attached, who was devotedly attached to him, and who could receive from no other human being the same degree of mingled love and protection as from himself; that it must be just the same to him whether he obtained permission to see her a dozen times a year, or took her home to his house; and *therefore*, under certain conditions of difficulty, it was more than probable he would not press his right to take her home. Yet this is the argument on which the lessened probability of reconciliation is founded: a man cannot love his wife better than a mother loves her child; not though he felt for her every sentiment of esteem, respect, tenderness, and admiration, which ever combined to give root to strong attachment. Neither man nor woman will be easily contented with a small portion of the society of those they love; witness the rashness, the risks, the mad follies committed, and the dangers run, in

illicit connections, where less apparent intimacy and frequency of communication might save both parties from suspicion. The human heart is too fervent, there is too much craving in its love, to bear patiently this meting and measuring out of hours; and for this reason, though a woman might thankfully and readily accept as a boon such intercourse with her children as the intervention of the law could give, the temptation and possibility of a return to the home which was *theirs* would remain as strong as ever; nay, I do not think I speak in ignorance of feminine feeling, when I say it would be *stronger* than ever; for an irrevocable parting may have a power like that of death, gradually to cause the object of regret to fade into a vague and painful dream; but the love whose memory is constantly refreshed by partial hope and partial communication, will yearn for something more; and the woman must be of a very stern character, or a very cold nature, who, seeing her children occasionally, would not consider within herself what obstacles existed to her return, and what was their weight; or whose thoughts, while in her infants' presence, did not occasionally wander back to the days when those children (now a source of bitter warfare,) were the bond of mutual interest and affection between her and her husband—a bond which God has willed shall remain unbroken and perpetual, amid all the strife of hearts, and the ruin of destinies, which the sin of man or the sin of woman may entail. So thinking, and so feeling, (as it is natural to suppose

she would think and feel,) can any one believe that where reconciliation was *possible* it would not take place? and where circumstances made it *impossible*, can any one think it just that a man should have a right to *angle* for his wife's return, (under any, the most revolting circumstances,) by the power of retaining and dividing her from her children?

VI. The last objection, (and also, I think, the one that has least shadow of justice,) is, that the enforcement of access would so DISTURB THE EDUCATION OF THE CHILDREN under the husband's superintendence, that it would be impossible for him to carry it on properly. This is at once assuming that the permission of access will be abused; that it will be obtained by an unworthy woman; that the mother will not have any true affection for her children, but only hatred of her husband. In short, it is begging the whole question, and considering the relief intended for virtuous wives with profligate husbands, as an indulgence invented for profligate and ill-conducted wives with *just* husbands; it is considering the relief intended to be granted at the discretion of the court, after a careful review of the whole circumstances of the case, as a relief rashly, blindly, and stupidly allowed, without any reference to such discretion.

For how otherwise, *except* by thus begging the question, can it in any way be expected that the visits of the mother should be injurious? It is urged

that she will endeavour to justify herself to her children at the expense of her husband; but what necessity is there of any justification, unless it is presupposed, on the other hand, that the husband takes advantage of his more full communion with his infants to abuse and set them against his wife? And, even were this the conduct pursued by the father, it does not follow that the mother would either need justification in their eyes, or that she would be at once so base and so foolish as to endeavour to cause hatred to spring up in their hearts towards the father on whom they depend and to whom they owe obedience. It would be *impossible* to explain to children of a tender age the circumstances of a family quarrel; no woman would be mad enough to attempt it, knowing that the only effect must be to shake and unsettle their minds on the great principle of parental duty, without giving her any advantage in their affections, which an hour's persuasion and reasoning from their other parent might not equally undo. Besides, it is not only probable, but natural, that in some cases a woman may heartily and sincerely desire that her children may love their father, *although* she be separated from him. A woman of a proud and jealous disposition may part from her husband for his inconstancy, but his inconstancy will not appear to her a bar to his children's affection. Many women, who have separated rashly and passionately, or who have been "put away" by their husbands, would in their secret hearts be glad of an

opportunity to return; and these women are far more likely to endeavour to impress their children with such notions as they may wish repeated to the husband, than to say any thing in his disparagement. As to the mother's "justification," she is very unlikely, as I have said, to need one; there is so strong an instinct of affection implanted by God in the young child's heart, towards the being who has watched over his helpless infancy, that the difficulty is to be found, *not* in justifying a mother in his eyes, or preserving a due share of fondness for her; but, on the contrary, in any ways degrading or bringing him to dislike or forget her. You may teach a child that his mother is an object of contempt or hatred to those around him; he will feel and know it as it were by instinct, for children are most accurate observers. You may teach him to hush his little voice to a whisper when he utters her forbidden name, or never to pronounce it; for this is only an effort of his half-matured reason to show submission and compliance to those in authority over him; but Nature's great instinct will remain nevertheless strong and unchangeable, except in rare instances. He will love and honor his mother; he will sometimes wonder at her absence, and sometimes pine for her return; he will comprehend that she is the subject of vehement displeasure, without comprehending that she has deserved it; he will perceive that there is "a quarrel; but nothing wherefore."

There is another very strong plea in answer to this

argument that the mother's visits and influence will disturb and set aside the principles of education implanted by the father : and that is, that as the father's custody is seldom or ever *real*, as the child, though nominally in its father's possession, and under his authority, is almost always of necessity confided to a third party, (and all the recorded instances shew this to have been done,) the mother's visits, in fact, would not interfere a bit more with the child's education, than the visits of the father. But as this matter of *nominal and fictitious custody*, on the part of the father, is elsewhere alluded to in my letter, I shall not here dwell upon it ; conceiving that enough has been said relative to an objection whose only force consists in assuming, that the court in which the power of protection may be vested will grant access to women grossly, basely, and revengefully disposed ; slanderers of their husbands, and selfishly careless of the real interests and improvement of their children.

I have, as far as lies in my power, pointed out what I conceive to be the unsoundness and injustice of all the principal objections urged against the spirit of the Infant Custody Bill ; leaving its technicalities to be dealt with by others ; and I shall now entreat your Lordship's further attention to a few brief observations on a very singular attempt at opposition to the Bill ; founded neither on a fair remonstrance against its probable results, nor a fair enquiry into its defects as a practical measure ; but simply on grounds of abuse of certain individuals, and more especially of

the framer and originator of the measure introduced last session.

While the Bill was in progress, and before it had been brought up to the House of Lords, a pamphlet in opposition to it, containing about an equal portion of invective and argument, was sent round to the members of that assembly. It was entitled "An Exposure" of the immoral tendency of the Bill; and the author modestly wound up with a sentence expressing his hope that the House of Lords would *reject* the measure in spite of its having been passed by large majorities in the Lower House; as, by seeing his pamphlet carefully forwarded to all the Peers, he had left them "*no excuse*" for deciding as foolishly as the Commons.

Apparently however, even the author himself entertained very strong doubts as to the Peers availing themselves of the advantage over the Commons, afforded them by the possession of his pamphlet; for he afterwards *published it* (with the addition of a great deal more invective and personal abuse) in a periodical journal; where it lost the title of the "Exposure," and, like a snake in summer, casting its old skin for a new one, assumed the respectable garb of "A Review" of the speeches of Mr. Serjeant Talford; of a pamphlet *in favour* of the Bill, privately printed and circulated, and attributed to the Hon. Mrs. Norton;* and lastly of an article in the Metropolitan,

* This lady published a letter, (in contradiction and disproof of the slanders connected with her name by the Reviewer,) which appeared at the time in most of the Morning Papers.

which the writer of the Exposure also gave to Mrs. Norton, for reasons which will presently appear. The "Review" of these different subjects, was published in the British and Foreign Quarterly; said to be edited by one of the sons of Mr. C. Kemble (a name which it is new to find even in remote connection with vulgarity, bad taste, and want of common generosity and gentlemanlike feeling). However, in this particular journal, the *rechauffée* of the overlooked pamphlet was sent forth to the world, and, under pretence of arguing the general merits of such a Measure of Protection as was proposed, falsehood and slander, expressed in the most vehement and unmeasured terms, were poured forth upon the individuals chosen as subjects of attack. Those individuals were Mrs. Norton and Serjeant Talfourd: Mrs. Norton, on the supposition that she had been the means of calling the learned Serjeant's attention to the state of the law relating to Infant Custody; and Serjeant Talfourd, on the supposition that his Bill was brought forward chiefly with reference to that lady's particular case; in support of which suppositions the author drew a very ingenious little sketch of invented and combined circumstances, which he denominated "The Secret History of this Bill."

When I first mentioned my intention of commenting on this professed "Review,"—I was earnestly assured that it was quite unnecessary: that the spiteful vehemence, gross personality, and childish folly of the greater part of the argument, would of itself pre-

vent any reasonable man from being gulled into a belief of the subjoined statements ; that Mrs. Norton's own letter in contradiction, however well written, was ill-judged, inasmuch as it called attention to what otherwise would never have received any attention at all : namely, the article alluded to. To these gratifying assurances I heartily wish I could have said "amen;" but experience has convinced me that there is no falsehood so foolish, no scandal so gross, no assertion so improbable, that it will not make its way into the world at large, and receive a credulous and confiding welcome. Whether it be that human nature, conscious of its own weakness, inclines always to an easy belief in errors, or whether it be "that passion for hunting something," observed upon by one of the most popular writers of our day, and which leads us to indulge eagerly in a sort of moral hunting down of a given object ; it is certain that so far from a false and injurious report requiring *no* contradiction, a man shall hardly find that method of contradiction which shall be strong enough to counteract its effects. Let any disinterested spectator watch the difference of feeling with which an evil report and its disproof (however positively and clearly it may be disproved) are received. The one is heard with avidity, with boundless and unenquiring credulity, and with something which, if it is not actually *thankfulness* for having been made aware of so much harm of a fellow creature, is very near akin to that feeling. The *contradiction* is received sullenly, sus-

piciously ; occasionally with no slight degree of irritation, as though you were robbing a man of something precious that belonged to him, by taking away his belief in a scandalous rumour. A thousand questions are asked with a view to shake the testimony of the disprover ; the most ingenious and insidious cross-examinations are entered into, such as would do credit to any lawyer at the bar, in the hopes of shewing that the said disprover is mistaken ; and at length, just as he imagines no further doubt can exist of an unfavourable nature, the believer bows his head with an unsatisfied nod, and murmurs that “ nevertheless he had it on good authority ; ” as though to assert his right *still* to consider “ that there must be something in it. ”—No ; it is as vain to imagine contradiction unnecessary, as to hope that it can ever be more than partially successful ; for, (to return to our borrowed simile,) we might as well attempt to whistle back a pack of hounds, as to check a certain portion of that busy crowd called “ the world, ” *in full cry* after a slander. But there are *just* men among us, as well as the *unjust* : and to their patience I appeal, if it be thought that I lay too much stress on the opposition of an intemperate and anonymous publication. The mischief a man does, is not always proportioned to his talent : the sting of the scorpion may wound, as well as the stroke of the sword : and as the habitual prejudices of men are easily startled by that which is made to appear an infringement on their proper rights and privileges ; as, consequently

an argument which affects to uphold those rights, and defend those privileges, is likely to be received with indulgence ; and much absurdity, much exaggeration, much violence, excused for the sake of the principle on which it is supposed to be conducted ; I have thought it as well to expose the nature and falsehood of the article referred to, after answering the real objections made to the general question. It is already a sufficiently lamentable reflection how large a portion of our *weekly* press, (edited too, by gentlemen whose abilities would do credit to better employment,) seek popularity by catering for the vitiated and unintellectual taste of scandal-mongers. But if this infection is to spread to our Reviews and Quarterly Journals ; if, in lieu of temperate and grave criticism, we are to be presented with pages of spiteful and untrue gossip ; if a man is to be allowed to spend three months in putting together in cold blood all that he can invent, and all that he can falsify, respecting individuals ; and then print the confused mass as a “ Notice ” of a legislative question, or “ Review ” of a political brochure ; if the celebrity of literary or professional men, and the characters of women are to be attacked, not only for the hebdomadal entertainment of those who are not capable of reading or understanding graver and worthier matter ; but for the misleading of such persons as may, and do, expressly seek for serious information on a subject of public interest, (which subject is therefore made the ostensible title to entrap them into a perusal of

private slanders ;) if all this is to be done, and done with impunity, the new literary fashion will make "Reviews" as unprofitable to the readers as discreditable to the writers.

With respect to the attempt made in the British and Foreign Quarterly, to set this fashion of personalities, I hope to shew that the attack upon individuals, there, has not been very successful; and waiving in this instance the precedence to which ladies are considered to be entitled, in order to disprove at once the imputation conveyed against Serjeant Talfourd, I beg leave, in answer to this anonymous author's "Secret History of the Bill," to give the Real History and Origin of that measure, in which there is as little shuffling or mystery as the plainest and most honest man could desire.

In the year immediately preceding that session of Parliament, during which Serjeant Talfourd made a successful attempt in the House of Commons to revise and alter the law of Infant Custody, he had himself been employed as counsel in two cases of dispute respecting the "father's right." In both these cases he was counsel for the *husband*; in both, the circumstances were of extreme hardship as respected the mother; in both, Serjeant Talfourd's explanation and support of the present state of the law (as admitting of *no* consideration of the mother) was successful; and the husband obtained a writ of attachment or sentence of imprisonment against his wife. One of these cases was that of a lady married to a gentle-

man of foreign extraction, named Anichini, who was committed to prison by Mr. Baron Gurney for disobeying the order made by him for delivering her daughter to her husband ; but the order being referred to Mr. Baron Parke, at the earnest entreaty of all the Judges of the Exchequer, was never publicly discussed ; and to that case, therefore, (in common with many others, which, however well known to the learned Serjeant, were not on record in the law reports,) no public allusion was made, on the discussion of the Bill.

The other case in which Serjeant Talfourd was employed (as counsel for the husband), was that of Mrs. Greenhill, who afterwards presented a petition to the House of Commons, and the report of whose painful history may be briefly copied here.

In the year 1829, Miss Macdonald (daughter of Colonel Macdonald, of Exeter ; grand-daughter, I believe, to Sir W. and Lady Chambers ; and niece to Mr. Chambers the magistrate ;) was married to B. C. Greenhill, Esq., of Knowle Park. Three infant daughters were born of this marriage ; and Mrs. Greenhill, in the autumn of 1835, was residing with these children at Weymouth, when she received intelligence that her husband (who was at that time absent in his yacht) was unfaithful to her ; that he had for more than a year cohabited with a female of the name of Graham, passing her off where he was not known, as his *wife*, and allowing her sometimes to assume his name ; while at others he adopted the

name *she* went by, and styled himself "Mr. Graham." Mrs. Greenhill, overwhelmed with sorrow and indignation, returned to the protection of her own family, and commenced proceedings against her husband for divorce in the Ecclesiastical Courts.

On Mr. Greenhill being informed of the discovery that had been made, and the plans his wife had in consequence adopted, he became anxious to prevent the proceedings in the Ecclesiastical Courts, and accordingly sent his attorney to obtain an interview with Mrs. Greenhill, and induce her, if possible, to relinquish the proceedings. The outraged wife, however, expressed her resolution to adhere to the measures adopted in unison with the opinions of her own family; and, finding that she would not consent to forego the suit, her husband changed his tone, and his solicitor was instructed to write and make her aware of the insult and injury which would be *added* to the wrong she had already suffered, in the event of her persisting to go into the Ecclesiastical Court; which was accordingly done: and she was ordered instantly to *resign her children*.

Mrs. Greenhill did not, however, obey this command; and the next step taken by her husband was to move for a writ of *habeas corpus*, compelling her to produce the three children on the 28th October, at the house of Mr. Justice Patteson. As soon as the writ was issued, and before its return, the mother instituted a suit in Chancery, for the purpose of making the children wards of that Court; and a petition

was presented praying the PROTECTION OF THE COURT, and that a proper guardian might be appointed.

On the night of the 28th October, in obedience to the writ of *habeas corpus*, Mrs. Greenhill having arrived with her children from Exeter, appeared with them at Mr. Justice Patteson's. Some argument by counsel on each side took place before his Lordship, who ultimately allowed the matter to stand over till the evening of Thursday, the 5th November, the children meanwhile remaining with the mother, and their presence being dispensed with by the consent of all parties.

On the morning of Thursday, the 5th November, the petition in Chancery was heard by the Vice-Chancellor, and six affidavits were read before him, the substance of which was as follows :—

That Mr. Greenhill had, as already stated, carried on an adulterous connection with Mrs. Graham, for more than a twelvemonth ; and that *he positively refused to part with her* (although he affirmed, that he had expressed his regret and contrition to his wife, and made overtures of reconciliation) ; that on being told by his wife that she had heard he had taken a house for three years for this woman, he replied, “ it was no business of *hers* if he had taken it for *ten* years ;” that he allowed Mrs. Graham to take his wife's name, and call herself “ Mrs. Greenhill ;” and at other times *he* called himself “ Mr. Graham ;” and that he desired the servant, who also occasionally waited on his wife, to wait on this woman, and drive

her out in his cab; that he left his wife at Weymouth, to go and live with Mrs. Graham at Portsmouth; and that he took her with him in his yacht, &c. : in short, that as to the act of adultery it was neither attempted to be concealed or denied; but, on the contrary, he had admitted it to his wife's uncle and other relatives, and expressed his determination to persist in the intimacy he had formed.

That Mrs. Greenhill firmly believed, that her children, if taken from her, would be *prevented from seeing her*, and delivered over to her husband's mother, Mrs. Mary Tyler Greenhill; that the said Mrs. Mary Tyler Greenhill had not only abused and quarrelled with her daughter-in-law, and refused to see her grandchildren, but that she had been at law for years *with her own son*; and that so bitter was their estrangement, that Mr. Greenhill had said to a friend who advised him to be reconciled to his mother, that such reconciliation was *impossible*; and that they were, in fact, *only drawn together by the anger of Mr. Greenhill against his wife, and since the quarrel between the parties*. That for these, and other reasons, neither Mrs. M. Tyler Greenhill, nor Mr. Greenhill himself, were fit persons to have the custody of these infant children, and that their mother *was* a fit and proper person, and *neither her husband, nor any other person, alleged anything to the contrary, nor had there been at any time a shadow of imputation against her*. That Mrs. Greenhill's own mother, Mrs. Macdonald (who had always been on good terms with her son-in-law, and had

shewn him great affection, especially in nursing him through the cholera, when every one else, from fear or prudence, withdrew from the house), *was willing to receive his wife and children ; to give them a permanent home with her ; and was also willing that the father should come and visit his children, at her house, as often as he pleased.* That Mrs. G. was fondly and devotedly attached to her little girls, and had never been separated from them ; and that the father had always been in the habit of leaving them under her sole custody and control during his absence from home ; and though it was affirmed, on the one hand, that Mr. Greenhill was a fond and attentive father, yet it was sworn in contradiction, that one of the little children being brought into the room with several strangers, asked Mrs. Greenhill's uncle, " *if he was papa,*" from which it was argued, that they had *not* been in the frequent habit of seeing him, since his connection with Mrs. Graham. Finally, it was sworn, that Mrs. Greenhill had always fulfilled, to the utmost, her duties as a wife and mother ; and that there was no possible ground for depriving her of her three little girls, but, on the contrary, every reason why she should be permitted the care of them ; and that her health, already very delicate, had suffered so much from the terror, agony, and sorrow, which she had lately endured, that it was expected she would sink under the blow (if inflicted) of that forcible separation.

All this having been sworn, the Vice-Chancellor gave an adverse decision, and dismissed the petition ;

the mother's separate claim not being acknowledged by the Court.

Similar affidavits were read again the same evening, before Mr. Justice Patteson, who was attended by counsel on each side. His Lordship took time to consider these affidavits; and said that before he decided, he would consult the other judges.

On the 10th November, his decision also was given *against* the mother's claim, and he signed an order that Mrs. Greenhill should forthwith deliver up to Mr. Greenhill his three infant children.

On the 12th, that order was made a rule of Court, and *served personally* by Mr. Greenhill on his wife, of whom he, at the same time, demanded the children. Mrs. Greenhill gave only a written reply, couched as follows :—

“ Mrs. Greenhill is desirous of paying the utmost
 “ respect to the Court; but as she feels that the
 “ health and comfort of her three infants (under the
 “ age of six years), will be destroyed by their re-
 “ moval from her care, she prefers sacrificing *herself*,
 “ if it be called for, rather than so sacrifice her *chil-*
 “ *dren*; being well assured, that their removal is
 “ with the ultimate intention of excluding her from
 “ all communication with them.”

Mr. Greenhill's next step was to make affidavit of the service of the rule, and of his wife's refusal to part with her infants, in order to obtain a writ of attachment against her; *i. e.*—to cause her to be *imprisoned* for contempt of Court.

Mrs. Greenhill, on her part, obtained a rule nisi in the Court of King's Bench, calling on her husband to shew cause why Mr. Justice Patteson's order should not be set aside, and the children remain with their mother.

A short delay was granted to Mrs. Greenhill to shew cause why an attachment should not issue against her; and the same delay was allowed to Mr. Greenhill to shew cause why Mr. Justice Patteson's order should not be discharged.

The matter was argued on the 24th November—Mr. Serjeant Talfourd appearing for Mr. Greenhill. At the conclusion of the learned Serjeant's address, Lord Denman observed that it would be better that some arrangement should take place, so that *both* parties should have access to the children; and to effect that object a further delay was given. On the following day, Mr. Serjeant Wilde, Mr. Serjeant Talfourd, Mr. Greenhill and his attorney, and Mrs. Mary Tyler Greenhill, met for the purpose suggested by Lord Denman; but owing, as affirmed, to the obstinacy and perverseness of this lady (who seemed determined to prevent her son from coming to any reasonable terms), no arrangement was entered into.

On the 30th instant, Mr. Greenhill declared, through his attorney, that no further steps would be taken for such arrangement; and demanded to see the children. Mrs. Greenhill becoming alarmed lest they should be seized from her, withdrew precipi-

tately and left the kingdom, taking with her her three little girls.

In January the matter was again argued (Mrs. Greenhill being still abroad), and the rule obtained by her, to set aside Justice Patteson's order, was discharged; or, in other words, the last attempt made by this unhappy and unoffending woman legally to retain possession of her infant children failed; the decision of the judges being given against the mother's claim.

In the course of the arguments advanced by the counsel on either side, at the different periods of this cause, the following observations were made in support of Mrs. Greenhill's case :—

“The children are all females, and infants of tender years, and whom it appears most UNNATURAL to tear from a mother who is devotedly attached to them, against whom not a shadow of imputation rests, and who her husband does not hesitate to admit is in every respect a fit and proper person to have the management of them. Illegitimate children under the age of nurture (which has been held to be seven years), cannot by law be taken from the mother; and it seems most unnatural and unjust that legitimate children should be in a worse position.”

“Mrs. G. does not dispute her husband's right to the custody of the children. She has offered to take them to any part of England Mr. G. shall prescribe, and to obey his injunctions, provided she be not wholly separated from them. The question in this

case is, not whether the rights of the father are paramount, but whether the law is entirely regardless of the natural claim of the mother."

"The mother does not even insist that the children shall be in the same house with her, *but only that she shall have access to them.* The real question is, WHETHER THE RIGHT OF THE FATHER AMOUNTS TO THE EXCLUSION OF THE MOTHER."—"Where the father applies, as in the present case, not for the purpose of really asserting his own right, but merely for the purpose of excluding the mother from having access to her children, this court will (in the exercise of its discretion) refuse to permit so harsh and cruel a proceeding: and pause before it makes an order to deprive children of so tender an age of the care and superintendence of the mother. *The court may be quiescent, and is not bound to act.* If this rule is made absolute, Mrs. Greenhill will have no means of superintending the education of her infant daughters, nor will she be able even to see them."

Such were the arguments advanced by the advocates of this young wife and mother, and such were the arguments Serjeant Talfourd had to rebut; supported as they were, by the eloquence of two gentlemen of the highest reputation at the bar, Serjeant Wilde and Sir William Follett. The clear and palpable injustice of the case it would have been impossible to deny, nor was it disputed or touched upon; but the learned Serjeant argued, that former decisions shewed the legal right under *all* circumstances

to be with the father. In the year 1804 there was a recorded case of disputed custody, between a separated couple of the name of de Manneville, where the husband entered by force and stratagem the house of his wife's mother, (whither she had withdrawn from his brutality and violence,) and seizing her infant, (then at the breast,) carried it off in an open carriage in inclement weather. His motive was to force his wife to give up some property she possessed separately. *She* appealed to the protection of the courts, but they decided against her.

In the year 1824 there is recorded a second case of disputed custody between a separated couple of the name of Skinner; in which (the parties being separated, from the cruelty and brutality of the husband,) the wife's child was actually taken from her, and given into the custody of the woman with whom the husband cohabited: the husband being then imprisoned for debt in Horsemonger Lane Jail. *This* mother also appealed, and in spite of the gross circumstances of the case, the courts decided against her.

In the year 1827 there is recorded a third case of disputed custody, between a separated couple of the name of Ball; in which the wife had obtained a divorce *à mensâ et thoro* on account of her husband's bad conduct. Her young daughter (who had continued with the mother,) was seized by the father one day that she went to visit him, and was sent where the mother could not for some time discover her.

When she did find her child, she was not allowed to see her except in the presence of the person who had her in charge. This lady appealed also, and offered to maintain and educate her daughter without assistance from the father; but the court decided against her.

In the year 1830 there is recorded a fourth case of disputed custody, between a separated couple of the name of M'Clellan. The child was at school, and became afflicted with scrofula, by which disease the mother had already lost two other children. She persuaded the governess, from motives of compassion, to allow her to take home her child and nurse it. The father procured a writ of *habeas corpus* to take the child out of the mother's custody, and send it back to school. The cause was argued, and a very feeling speech was made by Mr. Justice Patteson on the peculiar circumstances under which the mother resisted; but the court decided against her.

Serjeant Talfourd, in opposing Mrs. Greenhill's claim, went through all these recorded cases, which he afterwards noticed in the parliamentary discussions on the Infant's Custody Bill. The introduction of them in his speech was much insisted upon by the writer in the *British and Foreign Quarterly*, as proving the "*remarkable coincidence*" between the instances of hardship quoted in Mrs. Norton's pamphlet, and those mentioned by the learned Serjeant; the writer never perceiving, in his mingled irritation and stupidity, that *of course* if the instances were

taken from the printed legal decisions, it was impossible they should be *otherwise* than the same: and that the most ingenious person, copying from "East's Reports," and "Dowling's Practical Cases," could scarcely introduce *variety* into that very monotonous task.

These cases, then, were familiar to Serjeant Talfourd, and relied on by him in the successful support of a client's legal right, in the autumn of 1835; when, unless the gift of prophecy had been added to his various talents, he could not possibly have foreseen that the same species of dispute would arise between Mr. and Mrs. Norton, as was then being argued between Mr. and Mrs. Greenhill. Doubtless it is an ungrateful and painful task for any man to be compelled as an advocate to uphold and defend a legal right which he perceives to be grossly oppressive and injurious in its consequences: nor can it be wondered at, that his successful pleading in a case like the one we have narrated, should have given rise to a very different feeling from the professional satisfaction which may be supposed to attend successful pleading in general.

He had obtained a decision adverse to the mother, not because she had in any way deserved that heavy sorrow; not with any reference to real and natural justice; but simply because PRECEDENT (the lawyer's God,) was against the admission of her claim. He had been compelled to support that as an advocate, which as a man, possessed of the same generous

sympathies as his fellow men, he must have felt to be iniquitous and absurd. He was not an unknown or obscure lawyer, who might have found the effort to draw public attention to a subject connected with his professional practice, replete with difficulty: he had a name and a place among the proudest of the land: among the members of the legislative assembly of Great Britain; a place, not hereditary, but won by the gift of talent; that gift which, when combined with opportunity, a man is as much bound to use in the service of his fellow-creatures, as the rich are bound to give alms.

Serjeant Talfourd *did* avail himself of his opportunities. He called the attention of Parliament to the defective state of the law; he brought under the notice of other men, the facts and instances of its abuse so painfully forced on his own consideration: he besought them to vote with him for its alteration, that when hereafter some young mother appealed to English justice not to suffer *her* to be parted from her children, merely because her husband preferred a wanton to his wife; some better answer might be made, than a recapitulation of all the infamous cases of hardship which proved that it was *the law* that women should suffer without redress—that it was ‘so written in the bond.’ The last decision in Mrs. Greenhill’s affairs, as to the rule obtained to set aside Mr. Justice Patteson’s order, was given in January 1836. The measure proposed by Serjeant Talfourd was submitted to the consideration of the House of

Commons in April 1837; it was read a second time that session, but on the 20th June the death of the King taking place, the learned Serjeant being consequently obliged to leave town to canvass the electors of Reading, and the consideration of all but measures of the most immediate and pressing public importance being by common consent suspended during the brief and hurried remainder of the session—the third reading was put off till the ensuing spring, when the Bill was *passed* in the House of Commons *by a majority of four to one*.

Such is the simple outline with which I am enabled to confound the arrogant folly of the author who invented the “Secret History” of this public measure; and whatever the difference of opinion may be as to the probable efficacy of its provisions, whatever defects may have existed or been supposed to exist in it, no man can say that the occasion which first gave rise to its introduction was not a most just, proper, and natural opportunity for the exertions made by Serjeant Talfourd to obtain a more equitable law.

It did not however suit a certain class of the opponents of the Bill to admit *this* as the original cause of the measure to which they objected. They smothered all allusion to it—they suppressed it as if it had not existed; they feared a case so clearly and iniquitously unjust, ending in decisions so palpably absurd, would prove too strong for all the plausibilities they could muster in behalf of the non-intervention system:

They dreaded lest the hearts and minds of all unprejudiced men would be brought by this case to feel and understand the full importance of a subject hitherto shrouded from the public eye ; and which, they trusted, might after an unsuccessful struggle be once more consigned to obscurity. It was necessary to bring forward some more disputable case,—some case whose details were less known, and where they could therefore assume more, and admit less. They were assisted in this by the restless eagerness and open interest shewn in the success of the measure by Mrs. Norton, of whose affairs all that the public knew was that she had been slandered in the coarsest manner in an open Court of Justice ; and who being herself of a family greatly distinguished, and accused with a nobleman of high rank and official importance, had been the object of much public curiosity, much public censure, eager partizanship, and bitter personality. Here was a case where party feeling and private opinion might be supposed to be divided ; where prejudices might be roused, and doubtful judgment appealed to. This was what the objectors wanted ; on this they seized with delight. Although in Mrs. Greenhill's case there had been pleadings in Judge's chambers, in the Court of King's Bench, and in the Court of Chancery ; and in Mrs. Norton's there had been no pleadings at all ; although Serjeant Talfourd was directly employed in the one case, and only partially cognizant of the facts relating to the other ; it was settled at once what motive should

be ascribed to make the new measure at least *partly* unpopular; and the warning cry was raised,—“Pause! do not pass the Bill; it is brought forward by Serjeant Talfourd at the instigation of Mrs. Norton; it is to secure a possibility of appeal to that one woman; it is because circumstances have induced her husband to withhold *her* children, that this impudent attempt is made. Let not members of Parliament be lectured and sentimentalized into voting for such a law, only to serve the private ends of a woman who probably deserves all she suffers.” This was the tone taken, and it is one to which the merit of much cunning and ingenuity must be awarded—for falsehood never pleads so successfully as when it wears the mask of justice, and appeals in the feigned voice of rectitude and honour to the staunch and true feelings of the human heart. But the declaimers against the measure stood on more dangerous ground than they imagined, when they falsely selected this case as Serjeant Talfourd’s justification for endeavouring to alter the law. In assuming the very natural prejudice which would exist in the minds of many in consequence of the public scandal referred to, it never occurred to them to enquire whether that public scandal was the *cause* of the children being taken away, or the *result* (the revenge I had almost said,) of the mother’s resistance to their being taken away. The objectors to the Bill have dragged forward Mrs. Norton’s name in the discussion of this subject, not as *one* among those interested in it, but as the sole

cause of its production. They have dragged forward her name *for the purpose of creating a prejudice against the measure*, and have cared little what falsehood they coupled with it in their strong desire to attain that end. If, therefore, there is anything which disappoints and confounds those who have relied on this case for establishing such a prejudice, in the following statement, they have only to thank the spirit of injustice and gross personal animosity, whose long continued indulgence has *at length* called it forth. It is very true, as has been scornfully argued, that it is a matter of no interest to the public how the quarrel between this particular couple will terminate, or what its former features may have been ; nor, with reference to the attack in the *British and Foreign Review*, is it of any importance to the public that Kemble's son should make his editorship of a magazine an instrument for flinging mud at Sheridan's grand-daughter ; but that which is of the utmost public importance, of the most vital interest, is whether the two Houses of Parliament were *duped* by one of the most distinguished members of the Commons into the reception and discussion of a mischievous measure, framed and brought forward in fact to gratify a particular individual, the doubtful circumstances of whose case were such as cast a slur and discouragement on the measure itself as applying to separated wives. The facts are as follows :—

It appears that during the eight years of union previous to the separation, Mrs. Norton had been *twice*

compelled by the conduct of her husband to seek the protection of her own family, from open violence, and other grievances with which we need not deal. On both these occasions the husband besought forgiveness, made promises for the future, and was reconciled to his wife. Mrs. Norton was attached to her children ; it is to be presumed she was also attached to the father of her children, and that the usual " checks " against separation had due weight with her. She returned a first time ; she returned a second time ; and remained under her husband's roof. It was after this last reconciliation that her family (who had discountenanced it as a vain experiment), withdrew from Mr Norton's society. It is unnecessary to enter into their motives ; they ceased to receive him at their houses. or to hold familiar intercourse with him. Mrs. Norton being about to pay a visit to her brother in the country, accompanied (under these mortifying and disagreeable circumstances) *only by her children*, Mr. Norton took the opportunity, on the very morning of the intended journey, privately and suddenly to withdraw these infants. There was no threat or warning of such intention ; nor did the mother at first discover where they had been conveyed ; and when she had at length traced them to the house of a lady with whom her husband was intimate, she was unable even to obtain a sight of them.

It will naturally be supposed that this extraordinary measure had some connection with the trial which

afterwards took place, instead of its arising out of a family quarrel. Mrs. Norton's personal enemies, and the objectors to the Bill, have laboured to convince themselves and others that such was the case. It will therefore surprise them to learn, that it was not till six weeks *after* the carrying away of his children that it even *occurred* to Mr. Norton to bring an action, or to feel the least jealousy of the nobleman who was defendant in that cause. The first step adopted, after mutual threats of separation and angry complaints had been gone through, was on Mr. Norton's part, to make an offer (reduced to writing by a mutual friend,) to leave his wife at peace on condition that she remained with her brother, consenting only to see her children occasionally, and *requiring no pecuniary provision from her husband*. To this letter Mrs. Norton replied, with the usual rashness and ignorance of the law evinced by women, by refusing to give up her claim to her children, and by a threat of suing for alimony, and seeking a legal separation. Mr. Norton then attempted to reduce his wife to submission to his terms by threatening attacks on her character. Without professing jealousy of any individual, he passed in review *all* his wife's male acquaintance. Legal examinations were taken in about half a dozen different instances, but they were taken in vain. Wishing a woman guilty, fortunately does not make her so, and the advisers of these outrageous measures were disappointed. Mr. Norton then wrote to his wife's uncle, Sir James Graham, to notify the

cessation of these legal proceedings, and his willingness to enter upon quiet and decent arrangements for a separation : Sir James Graham, in an interview which followed this communication, demanded as a preliminary to *any* arrangement, a written retraction of the various charges which had been made against his niece ; and so far was Mr. Norton at that time from adopting the tone (afterwards taken *for* him,) of an injured and outraged husband, that the counter-condition made with Sir James was, that the charges urged against Mr. Norton himself by his wife's family, should *also* be retracted ; a pledge which this mediator had no power to give. Mr. Norton then requested twelve hours to consider whether he would sign an *unconditional* retraction ; and the next day he informed Sir James Graham that he had consulted his friends, changed his mind, and that he would bring an action against Lord Melbourne ; this being the first time that nobleman's name had been mentioned, or any notion entertained of making him the *nominal and apparent cause* of a separation with which he had nothing whatever to do.

Then followed a trial, such as Lord Brougham graphically described in the House of Lords, while opposing this very Bill : " where the wife has no defence, but behind her back, by the principles of our jurisprudence, her character is tried between her husband and the man called her paramour." It availed nothing that numerous friends and relatives could have deposed to the circumstances under which

the separation took place; to the treatment of the wife previous to the separation; to the fact of this accusation having been got up, as a last resource and engine of attack, six weeks *after* the quarrel of which this was made to appear the origin. This might have been the defence of the *woman*, but the woman could *make no defence*: it was a simple question between plaintiff and defendant, in which she was not legally considered a party. Nay, it was at the option of the lawyers on both sides, "in the direct spirit of duty to their clients," to conceal and suppress all such explanatory circumstances. On the part of the defendant, it would be contrary to the etiquette of gentlemanlike defence to cast aspersions on the husband, which, though their proof might lessen the amount of damages so as to preclude a divorce,* *must* leave the question of guilty or not guilty, of the sin imputed, precisely in the same condition as before: while on the part of the plaintiff it would be obviously absurd, (since the success of his case, and the amount of damages, depend on the proof of injury done him by the breaking up of a happy home, and the corruption of a beloved and valued wife,) to permit it to appear that quarrels and separations had *already*

* If the damages are under forty shillings, though the verdict be for the plaintiff, he can obtain no divorce; and this may be the case where gross misconduct is proved against the husband, or where the woman is proved to be of such loose and profligate character that the loss of her affection and society cannot be supposed to call for damages.

taken place. Between these two interests of plaintiff and defendant, therefore, the woman's character is left to take its chance ; the one interest being directly opposed to hers, the other completely independent of it. The trial was conducted according to these usual rules, and the customary spirit of duty to clients. The plaintiff was represented as a fondly attached and injured husband, the defendant as a treacherous friend and profligate seducer ; nor was there anything peculiar in the affair, except the disreputable class of witnesses employed, a more than ordinary coarseness in the details of the evidence, a total omission and dead silence respecting the three last years during which the intimacy had subsisted, (which would have forced them to call witnesses known to be favorable,) and a very industrious attempt to blacken the lady's character, to a degree which, had the description been correct, would certainly have made her no great loss to any husband, nor a subject for 'damages' in any court.

All having been said that could be said on the part of the plaintiff, and all his witnesses examined ; and the other side having been heard, merely in defence and denial of the charge, without calling any witnesses at all ; the jury, without retiring to consider their verdict, gave it for the defendant ; on the sole ground of the incredibility and contradiction of the evidence offered. The defendant added a solemn declaration of the falsehood and groundlessness of the charge, and the enquiry ended.

Lord Wynford and Dr. Lushington then met to arrange terms of separation between Mr. and Mrs. Norton; but Lord Wynford refusing to include the children in that arrangement, and Mrs. Norton persisting in her refusal to come to any arrangement which did *not* include them, the negotiations were broken off. They were renewed, broken off; renewed, and broken off again, by different parties, but always on the same ground. At length Mr. Norton proved his own opinion as to the truth of any slander brought forward against his wife, by doing precisely what he had done in the two former instances—he requested her to *return to her home*; there to resume the position of wife and mother, instead of struggling to obtain partial intercourse with her children elsewhere. There were difficulties and delays; but Mrs. Norton ultimately consented to this arrangement, her husband making, both to her and various friends, written and verbal assurances that the trial took place against his judgment, against his will, *at the instigation, and through the interference of others*. The intended reconciliation did not however take place, having been frustrated by the efforts of a member of Mr. Norton's family, then residing with him; and the children, who had been chiefly with their mother while the negotiation was pending, were once more, (without a word of explanation or warning, without any previous knowledge on the part of the mother that it would be so,) suddenly removed from their father's house, and delivered up

to his brother ; after which, to preclude the possibility of communication with their mother, they were sent to Mr. Norton's eldest sister in Scotland. Arrangements for a separation were now renewed, with a threat that if Mrs. Norton did not submit to them, *without stipulation respecting her children*, she should be advertised in the public papers ; which was accordingly done. Such an advertisement being in reality of *no legal effect*, but merely an insult and annoyance, Mr. Norton again proposed to negotiate ; and his wife having become well aware of the hopeless struggle she was carrying on, expressed her willingness to submit the whole matter, (including the question of access to her children,) to any referees who might be appointed. Two gentlemen of high character in the legal profession, undertook the arrangement ; and both the disputing parties bound themselves to abide by the result. The amount of income and access was agreed between the arbitrators, and the children recalled from Scotland, to be placed with their mother for a time : when Mr. Norton, considering the terms too favourable to his wife, suddenly broke off the negotiation : refused to be bound by his written promise to abide the result ; quarrelled with his referee ; and cancelled the recall of his children, who remained in the custody of his eldest sister as before.

A fresh advertisement in all the public papers, repeated day after day for more than a fortnight, was the next step resolved upon by Mr. Norton ; by which

he made it appear that *his wife* was the party who resisted all arrangement; instead of the fact being that he could get *no other gentleman* to countenance the arrangements he chose to make for her, or to admit the justice of his proceedings; and that on *this account only*, no terms of separation could be drawn up.*

Pending these different steps, Mrs. Norton, on her part, endeavoured to put her threat into execution. of seeking a legal separation on the ground of cruelty, &c. supporting it by a statement of events previous to the withdrawal of her children. But she was made aware of a new feature in the law, namely, that as there had been *condonation*—as she had

* In the pretended Review, allusion is made to an action brought against this gentleman by one of his wife's creditors, and the speech of his counsel is quoted, asserting that it was the *lady's* fault this action was brought; and that the object was "to ruin Mr. N. and drive him out of the country." The lady could make no answer, for (as in a more important case) she was no party to the cause; and as it would appear by recent explanations, that one of the privileges of the legal profession is to be able *professionally* to assert that which is untrue with impunity, the boldness and ingenuity with which the clever advocate made the aggrieved appear to be the aggrieved, is probably deserving of *professional praise*. But the simple *fact*, (to which the "*Reviewer*" preferred the legal *fiction*,) is, as I have already shewn, that Mr. Norton having refused to submit to any opinion as to what *ought to be* his conduct to his wife; and having preferred threats and advertisements to the usual and decent course adopted by persons in his rank of life, left no other course open to those who had given the lady credit, than to attempt to recover from *him* the debts he did not choose to enable *her* to pay.

forgiven those acts of which she complained, and consented, in spite of them, to return to her husband's house, she could have no legal remedy afterwards. She endeavoured with equal ill-success to obtain legal interference, either for the restoration of her children, or for compelling the assignment of some cause for the cruelty of withholding them; more especially as the custody was *not* with the father, but with different members of his family, to whom he himself, verbally and in writing, attributed the infliction of that public trial, and the refusal of proper terms of access; and to whose hands, therefore, it was a double misery to see her children confided, since she was thus compelled to yield them, *not to their father*, their other parent, and natural friend and guardian, but to those whom she had every reason justly to consider as her most bitter personal foes; to those by whom she had been falsely defamed; by whom her husband had, according to his own shewing, been driven onwards when he would fain have stopped; and by whom, finally, her return to his roof, and the consequent enjoyment of her children's society, had been prevented.

It was after this unsuccessful struggle that Mrs. Norton was introduced to Serjeant Talfourd, (with whom she had no previous acquaintance); not, as it is falsely asserted, with a view to the *creation* of the measure with which her name has been cunningly connected, but on the contrary, after being made aware that the learned serjeant *having been counsel*

in support of the law against Mrs. Greenhill, had taken a deep interest in the subject, and was about to bring it under the notice of Parliament. Mrs. Norton's anxiety for the success of that attempt it would be absurd to dispute, nor do I suppose she would herself dispute so natural and inevitable a result of the circumstances in which she was placed. But she did not stand alone in the expression of such anxiety; many, very many letters were received by Serjeant Talfourd, after his intention became public, from other ladies utterly unknown to him; authorizing him to state the facts of their living bereavements to the House, and explaining the circumstances under which they suffered. The expression of anxiety in all these cases was the *result* of the Bill of Infant Custody being contemplated, not the *cause*; and it is as natural that all such women as have suffered for the want of such a measure, should expect their several statements to add to the impression of its being required, as it is *unnatural* and ridiculous to suppose that on a single *ex-parte* statement, a man of Serjeant Talfourd's high and honorable feeling would undertake to *cheat* the House of Commons into changing an important law; even were his influence in the House of such a miraculous nature that he could *blind* that great body of men, that mass of sons, husbands, and fathers, not only to his motives in bringing forward this measure, but to the injustice of the measure itself; (which is the very strange compliment paid him by the inventors of this folly).

So much I have said for the truth's sake, and in answer to an imputation, which, in spite of its ridiculous nature, is, I perceive, gravely adopted by intelligent and well meaning persons.* And yet I would respectfully ask your Lordship, I would ask those who may happen to read this published letter, what there is in the circumstances of Mrs. Norton's case, not only to take away *her* title to redress, but to form a ground to call upon members to refuse a measure of redress to all the females in Great Britain for fear this lady should benefit by it, and on the supposition that it was intended she *should* benefit by it? In the outline of her case, as I have given it, there is nothing overcharged; I have not appealed for sympathy by dwelling on particulars of sorrow and endurance; I have abstained as much as possible from accusation of others, my object being merely explanation and defence, and my interest in the matter not being to obtain pity for Mrs. Norton, but a clear understanding of one of the grounds on which the opponents of Serjeant Talfourd's Bill have chosen to make their stand. Is there anything in that outline, brief and dry as it is, (addressing itself to unprejudiced opinion, and not to the passions or feelings)

* Not only in the *Atlas*, and other papers, conducted with talent and moderation; but in a pamphlet by R. Mence, Esq., lately published, and written in *direct and earnest support* of some measure of this sort; this absurdity is adopted and alluded to. So much for leaving the folly and bitterness of a falsehood to wreck itself! So much for the non-necessity of contradiction!

which can justify the tone of attack which has been adopted? Is it justified because the bereavement of the children was followed by a public accusation; not intended, not planned, not thought of, at the time they were taken away? That would be a dangerous doctrine, for it involves the assertion that a man has only to commit a second injustice in order to justify a first; that a husband has only to be persuaded into publicly defaming his wife (no matter with what positive success), in order to obtain impunity for all the past and all the future suffering with which her life may be visited. The truth of that public defamation was denied by the verdict of an English jury, by the solemn declaration of the accused, and last, not least, by the husband himself; he who best knew the circumstances which led to that trial; he, who having been plaintiff in the action brought, was most thoroughly acquainted with each separate item of evidence, and the *value* of that evidence; he who finally set at rest the question of *his* belief in the truth of the coarse accusations, which made him out an injured and betrayed husband, by requesting his wife to return to his home and his affections, and by excusing to her the infliction of that great and undeserved disgrace, on the plea of temporary irritation, worked to frenzy by the interference of others.

What answer will those who attempt to make a handle of Mrs. Norton's case against the Infant Custody Bill give to this? Will they say that the oath

of the accused, and the admission of the husband, go for nothing, and that the decision of the jury merely proves that twelve foolish gentlemen came to a wrong conclusion; or, that these twelve gentlemen falsified the law, and braved the conviction of their consciences, in order to gratify Mrs. Norton, as Serjeant Talfourd is supposed to have intended to do?

The verdict of an English jury, if not an unerring means (as no human means can be), is at least an accepted means of deciding the question of "guilty or not guilty." Under the shelter of such acquittal, the poor man is discharged from prison, and goes home to rejoice with humble friends, and to resume that enjoyment of social rights and social privileges which has been interrupted by a false accusation. Under the shelter of such acquittal, the defendant between whom and Mrs Norton's husband her character was tried, stands free from the charge brought against him of having seduced a woman young enough to be his daughter, under the guise of friendship and patronage to her husband; enjoys the highest place in the councils of this kingdom; and sways the helm of state, distinguished by a peculiar degree of favour from royalty; insomuch that it would almost seem as if he combined in his own person the offices of guardian to an orphan, and prime minister to a beloved sovereign. This is the position of the *man*, involved in that charge, absolved by that acquittal: on what principle of equality of justice or common reason, do the opponents of the

Custody Bill undertake to consider the position of the *woman* involved in the *same* charge, absolved by the *same* acquittal, as so degraded that the very idea of her case having been considered in the promotion of this measure, is to be looked upon in the light of an imputation against the promoter? that the simple fact of her maternal interest in the success of the measure, is to be an argument with rabid scribblers for throwing it out altogether?

Away with the mean hypocrisy, the childish folly, the illiberal anger of little minds, which would justify an opposition on such paltry grounds. If it be fit, just, and expedient, that this Bill, or a Bill of this nature, *should* be brought in to improve the present law, no cavilling at the motives, or *invention* or conjecture of the motives, which originally caused the attempt to be made, should be brought to prevent its succeeding; if it be *not* fit, just, or expedient that such a measure should be passed, it must be easy for those who are convinced of its unfitness and inexpediency to find some argument strong enough to crush it, without seeking to crush at the same time, by unjust vituperation, a woman already in sorrow and distress. The question of the propriety and necessity of the ALTERATION OF THE LAW, is the question the House has to consider, and not the paltry and ridiculous doubt whether Mrs Norton used her woman's tears, and her woman's arguments, to increase Serjeant Talfourd's acquired impression, that there ought to be vested in the courts a peculiar

power of protection to meet certain cases, which power at present does not exist.

The author of the article in the British and Foreign Review has earnestly endeavoured (as a *second* chance of creating a prejudice) to connect the ill-advised public attempts on the part of a few women, to assert their "equality" with men; and the strange and laughable political meetings (sanctioned by a *chair woman*), which have taken place in one or two instances, with the effort to remedy the injustice of the law of Custody: and, in order to perfect the chain of his argument, it is impudently, most impudently asserted, in the title page of the review, that an anonymous article, entitled "An Outline of the Wrongs of Women," (which article this author proceeds to criticise in the grossest and most bitter terms,) is the production of Mrs Norton; and her falsely assumed authorship of this paper is connected with, and added to, her other crime of being interested in the success of Serjeant Talfourd's Bill, till the reviewer has scarcely terms to express the degree of his abhorrence and indignation. Now, it is certain that every man has a right to form what opinion he pleases, and that the expression of those opinions, in coarse and violent language, or the reverse, is merely a matter of taste, and entirely at the option of the person arguing. But no man has a right first to invent a direct and positive falsehood of another, and *then ground upon that falsehood* arguments to his or her disadvantage. To the furious remarks made

on the article asserted to be by Mrs. Norton, and publicly disavowed by her, I am happy to have it in my power to make the following very simple reply:—

“Messrs. Saunders and Otley present their compliments to Mr. Pearce Stevenson, and have no hesitation in supplying him with their direct, positive, and unqualified assurance, that Mrs. Norton was NOT the author of the article entitled ‘An Outline of the Grievances of Women,’ published by them in the May Number of the ‘Metropolitan;’ and that the assertion referred to, in the British and Foreign Review, is consequently, to their knowledge, WHOLLY DESTITUTE OF FOUNDATION.”

“Conduit Street, Dec. 3, 1838.”

As the want of modesty and virtue is the worst accusation that can be made against a woman, so perhaps the want of integrity is the worst accusation that can be made against a man. Now, suppose that the author of this bitter and ill-judged article was on the point of benefiting by the services of a friend, or the kindness of a powerful patron, and that some person, who had a direct interest in preventing his success, was to say to that friend, or patron, “I give you my most strenuous and earnest advice, to have nothing to do with this man; he is destitute of common honesty; you cannot rely on a word he says. I can of my own knowledge assert that he converted into cash, for the settlement of a gambling debt, some valuable jewels held in trust for the orphan child of a friend, and it is notorious that he cheated his own brother out of a considerable sum; besides which, he is a turbulent and unprin-

cipld fellow, and encouraged the riots at such a place merely out of spite to a person who has extensive cotton mills in that neighbourhood." If this were said, and particulars given so as to make the slander more plausible and more difficult of contradiction, and the report at length reached the accused, would he not exclaim, with very natural indignation, " Good God ! if it is this man's interest to oppose me, let him at least do so honestly ; do not let him attribute to me actions of which I am incapable ; do not let him invent for me motives which I scorn ; it is a monstrous baseness and cowardice to attempt, by such means as these, to counteract my wishes, and to rob me of the good will of my friend and patron ; it is a boldness and depth of malice for which I was not prepared." This, or something like it, would be the probable language of this man, under such circumstances ; yet he has not feared to inflict on a *woman*, that which he would have considered a gross hardship if inflicted on himself. Nor is it any justification, in such a case, to say, " I did not *invent* the report ; I heard and adopted it : " the man who chooses to print and publish slanders, and to ground upon them vehement abuse, is not to content himself with the chance of their not being false ; he is to be certain that they are *true*.

With respect to the arguments of this author on the Custody Bill itself, (apart from the personal attacks which appear to have been his main object,) it is scarcely necessary to notice them ; for, if here

and there a grain of corn be found in the heap of chaff, a spark of *direct* reasoning among the mass of confused and exaggerated abuse, it has already been dealt with in these pages. His great argument is the inferiority of woman, of whom he grandiloquently observes that she is "*created to bear other moral beings*, and so to be saved, by performing her part as mother in the great regeneration, all which she receives by God's will through her husband, her head, the young Christian's father." He also speaks of the permission to live with her children under *any* circumstances, not as a natural or admissible claim, but as her "divine and blessed reward." Much cant and folly, bordering on blasphemy, is backed by such texts from St. Paul as can be twisted to suit the purpose; omitting, of course, the Apostle's beautiful and simple charge, "Husbands love your wives, and *be not bitter against them.*" Milton is also continually referred to, somewhat rashly, since Milton's harshness, in his domestic circle, is a matter of historical notoriety. (Nevertheless, of the argument of inferiority I have not the slightest wish to deprive this author, since, as I have already observed, submission to individual authority does not imply forfeiture of general protection, and women may be dutiful inferiors, without being ill used slaves.) He is particularly eloquent on the subject of Perjury, and the explanation of all the falsehoods which wicked wives will swear against their excellent and abused husbands, and also narrate of their happy and comfort-

able homes ; never considering that if their husbands *were* kind and excellent, and their homes happy, there was no possible temptation to risk at once the reputation and the comfort of their entire lives by leaving such home and husband, to perjure their own souls, and bribe others to copy the crime. He is equally happy in his observations on the chance of imprisonment for contempt, to be incurred by fathers; in the course of which, he totally overlooks the startling fact that at *present* imprisonment for contempt is the punishment of the virtuous and blameless mother, only for desiring to be faithful to her children, though her husband be faithless to her. But, indeed, the great peculiarity of this writer is the complete one-sidedness of his argument. To him the word *woman* signifies a *bad woman*; he cannot conceive any other case; he cannot form to himself any other idea. Whether he has never lived in any but that class of women calculated to inspire these opinions; or whether he has himself stood in the position of a deceived and deserted husband; or whether he never sufficiently esteemed the sex to choose a companion from amongst them "to bear moral beings," and admit her inferiority, cannot be known; for although he bravely calls upon Serjeant Talfourd by *his* name, and Mrs. Norton by *her* name; and commands them to avow this, and deny that, or connects them openly with such falsehoods and inventions as may please him, yet he so far shows that he understands the value of the anonymous character in some cases, by strictly preserving it *himself*.

But whatever may be the *cause* of the tyrannical opinions held by this unknown gentleman, or his motives for personally attacking Serjeant Talfourd and Mrs. Norton, and endeavouring to connect the maternal sufferings of the one, with the Parliamentary efforts of the other ; it is obvious that the opposition, which is grounded entirely on one view of a subject, and on false and malignant representations, cannot be of much value. Indeed, it is scarcely possible to believe, on a perusal of the article in question, and on a consideration of its utter want of sound and temperate judgment, that such a bombastic schoolboy's exercise on a subject of public interest, can be the production of a grown up human being, come to the full maturity of thought and feeling.

Where was the *mother* of this man ?—in her grave, or on this earth, when he undertook to speak of the whole female sex, as of animals who required caging and chaining ?—of English wives and mothers as if they all desired to forsake their homes—as if they all hated and rebelled against their husbands—as if they only waited for some revolting watch-word of liberty to give loose to every wild and profligate feeling that stains our commingled nature ? Did this author never see that very usual and customary sight, a modest and affectionate wife ? Did he never see a woman watching the cradle of her sick child ? Did he never see a mother teaching her little one to pray ? Did he never see the welcome of a long absent son to his home, the embrace of the aged mother, the tears

of the young sisters? Did he never see, hear, or read any of the instances of devoted fondness and unswerving faith shewn by women to their husbands, in danger, in temptation, in distress? Such instances have abounded, and will continue to abound, though in an erring world. Such pictures are, I thank God, no images of romance, but common everyday scenes from English domestic life. Finally, did this anonymous railer never hear it said (and that by his fellow men) in behalf of the gentle, faithful, affectionate race he has maligned, that even among the worst and most degraded class of women, among those whom early seduction or instinctive profligacy has reduced to a life of habitual and *mercenary* sin; it is by no means uncommon to find some strong preference and faith of the heart, capable of withstanding even ill usage and brutality from its object; some link to better feeling, from the very strength of "*woman's nature*" preponderating over the revolting circumstances of her lot; some narrow glimpse of a holier light, which runs like a silver thread through the coarse and filthy texture of her degraded destiny? It is said that such is the case, and I believe it. I believe that so far from women being the devils incarnate supposed by this writer, over whom it requires that all the mastery of man, all the unlimited power of the husband, and all the severity of the law, should be exerted, in order to prevent them from plunging into vicious excesses; so far from the gross abuse indulged in by the author of that article, being deserved

by the generality of English wives and mothers ; that there are many who never *were* wives,—ruined creatures, whose names would be spoken with bitter scorn were not a shield found in their very obscurity, who practice more faith, tenderness, and affection towards the men who depend on them for those feelings, than some men are apt to practise even towards those of the weaker sex who best deserve it at their hands ; those to whom they are bound by marriage ; those whom they have made a solemn vow at God's altar to love and protect. However, there is no injustice so great that it has not in its time found *some* supporters. Even the Abolition of Slavery was long and strenuously combated, and that by persons of far greater eloquence and talent than the gentleman employed to write in Mr. Kemble's review ; though in *this* they resembled him, that they *also* undertook to twist sentences from the Scriptures into an apparent justification of inhuman cruelty, and to prove that slavery should be encouraged (or at least permitted), by reference to Holy Writ.

That there should be, therefore, an opposition to the attempt to introduce a measure of the nature of the Infant Custody Bill, is not surprising ; and it is perhaps on the whole satisfactory to find that the only publication against it since its introduction, consists of an attack upon the individuals supposed to be interested, founded on several distinct misrepresentations, and some vague abuse of the female sex generally.

In the House of Commons, Serjeant Talfourd's

Bill was passed by a majority of four to one. To assume, as the author of this article does, that this great majority gave their votes, some in utter ignorance, others without due consideration of the subject, and many from private interest, is not very courteous, since it divides that great body of the chosen representatives of the people into two rather unpopular classes, fools and liars; and is, besides, somewhat dangerous, since it involves the assumption that it is not the habit of the members of that House to *consider* the measures submitted to them, but merely to *pass* them, as ignorance, caprice, or carelessness may suggest. I have however sanguine hopes, that in spite of the enlightenment of the two Houses by the author of these opinions; in spite of the additional publicity obtained for the article by the cowardly abuse which wrung an answer from the weakest of the parties attacked, though Serjeant Talfourd himself scorned to notice it; in spite of the efforts, of more intelligent if not juster-minded men, “to make the worse appear the better reason,”—the husbands, sons, and fathers in our free Parliament will *still* be found ready to listen to and relieve (as far as lies in their power) the complaint of the oppressed; and that whatever changes we may see in these unstable times, we shall at least *not* see so great a change in the character of Englishmen, as will make them encouragers of ferocity, brutality, and cruelty, exercised by the strong against the weak. We read in Commodore Byron’s account of his shipwreck, a narrative of the cacique, or chief, who, when his child had slightly offended him,

dashed it to the earth, where it remained senseless and bleeding. We read in Washington Irving, of the American Indian who struck down his favourite wife, killing her at a single blow, and then sate in stupid despair by the corpse for three days. We read these and other wild stories, and exclaim "Such are the acts of the *savage* !" But I fear, if all were told, we might find savages more cruel in our own civilized country. *Life* is indeed a precious thing, even when made bitter by sorrow, or helpless from infirmity of disease ; we cling to it, we struggle for it ; we pray to be shielded from "murder and sudden death ;" we have a morbid and instinctive horror of the man who lays violent hands on a fellow-creature ; yet it may be doubted whether there is not more mercy in the one passionate blow of the ungoverned savage, than in the *pain of years*, doggedly inflicted and wearily dragged on. It may be doubted whether it were not better that a man should have power to stab his wife to the heart, than power to poison the peace of her days and the rest of her nights, by the long fever of perpetual anxiety, perpetual pining, and ever-during regret.

It is now upwards of twenty years since a case occurred, which was, I believe, decided in Judge's chambers, and never having been before the public, has not been recorded ; but which shews how much may be done and suffered in a Christian country without any outcry being raised ; without any note being taken to mark the "savage" act as it fled by ; without any arm being interposed between the tyrant and his

victim. The husband in this case was of known profligate habits; the wife was free from the very shadow of suspicion: he became weary of domestic ties, and involved in connections of a very different nature; and, after behaving with the greatest violence and cruelty, he resolved to get rid of his wife altogether.

For this purpose he proposed to her to pay a visit to her mother, and without any previous warning of his intention, left her; and abandoned himself to the pursuits which best suited him. At the time his wife was thus unceremoniously put away, she was about to become the mother of a third child; two sons being already the offspring of this ill-fated marriage: the husband not only claimed and obtained the possession of his two boys, but he took away *the child born after his desertion of his wife*; and which, being a female infant, she especially desired to keep. This child died; and to that degree was inhumanity extended, that the first intelligence of its decease reached the unhappy mother *through the medium of the public newspapers*. The boys, after being a while in the custody of the father and his mistress, and sharing his regard with this woman's illegitimate children, were sent to France, to a school where they actually had not enough to eat, and where, from the rigid economy practised towards them, by the father who preferred spending his money on vicious pleasures, they also suffered from other discomforts, deficiency of clothing, &c. At first the mother contrived to correspond with them; but this was discovered, and not only forbidden, but these boys wrote by direction,

and under dictation of their father, letters to their innocent and miserable mother, announcing their determination to write no more, in terms so gross, so cruel, so full of insult, and falsehood, that it is painful to think a child could have been brought, by *any* means, to address them to a parent.

At length, the wife, who had endured poverty, inconvenience, and tyranny, with a forbearance which would have been weakness in any but a mother, hoping against hope to regain her children, and fearing to exasperate the savage who kept them : sued successfully for alimony, which was awarded to her in proportion to her husband's income. No sooner was this done, than the husband informed her that as he was compelled to pay her this annuity, he would no longer be burdened with the support of his sons, for whom she might provide out of the alimony she had obtained. After eight or nine years of enforced separation, her sons were accordingly restored to her at an age when the cleverest and most anxious mother must find her guidance and guardianship utterly unequal to cope with the difficulties of a young man's outset in life, and with an income utterly inadequate to supply even their reasonable expences. They had endured in the meanwhile, during their joyless and neglected infancy, every privation and sorrow which can be felt at that age ; and every blighting and warping effect on the heart and understanding, which their unnatural position, (orphans though with parents living ; friendless creatures though with a large circle of connections ;) could be supposed to

entail. *This* is one of the many less public instances of the effect of the present law of Infant Custody. It is one in which your Lordship's memory will probably supply the name, which I have at this time no opportunity of requesting permission to insert. It is one in which the wife's character was unimpeached even by her husband, (to whom it never occurred to justify tyranny by after defamation;) it is one in which the parties are both of noble English families of rank; consequently had redress been possible, the rich and powerful connections of the lady would have assisted her in obtaining it. It is one in which the unsuccessful struggle of an injured wife and bereaved mother made a sensation at the time, but which has passed away into the obscurity which covers all private wrong, and private suffering, and more especially the sufferings and the wrongs of women. But it is also one which false reasoning and vain plausibilities cannot touch; which without any exaggeration or romantic colouring, stands out in simple and severe relief, a case of gross cruelty most savagely inflicted; and which calls on all honest and humane minds, for sympathy and indignation.

It is with reference to this, and other cases, that I would press on your Lordship's consideration, *one* plea in favour of a Measure of Protection, which, though very obvious, has I think, been little noticed, I mean the fact, that the custody of the father is scarcely ever a *bonà fide* custody on his part, but a mere exertion of authority to wrest the child from the mother, and to place it in the hands of some other

person ; which person, being chosen on the plea of irresponsible power, may or may not be a fit and proper companion or guardian for the child ; may or may not be as well, or better able to educate it, than the mother : for the father is in no way bound to shew that it is for the advantage or well-being of the child that it is so placed.

It is the language of the law, (and it is also the language of the opponents of any alteration in the law,) to speak of the father's custody as *real*, and the interference proposed, as being inconvenient and impracticable, precisely in proportion as it is an interference *between him and the mother*; but in all the cases on record, the father's custody is merely nominal, and from the nature of circumstances, can scarcely be otherwise with young infants ; consequently the interference is between the *mother and a stranger* ; and the person to whom the mother does in fact surrender her child, is not the father, but his delegate ; too often the very individual who has strained every nerve to widen the breach between her and her husband !

In the case of De Manneville, where the father took away the infant at the breast, in order to compel a disposition of property in his favour, he was of course obliged to give his child to a nurse. In the case of Mc Clellan, where the diseased and dying child was parted from its mother, it was given to a governess ; in the case of Ball, where the wife had divorced her husband by reason of *his* adultery, and was yet obliged to relinquish her young daughter, the girl

was left at first with a female servant of all work, and afterwards sent privately, by the father, to a school. In the odious case of Skinner, the father being in prison for debt, gave the child he wrested from his wife, to the woman with whom he cohabited. In the case of Mrs. Greenhill, the father stated it to be his intention to place his three little girls with his mother; with whom his wife had been on bad terms; with whom he *himself*, had been at law for years; who had previously refused to notice the children; and who, by the exertion of her fierce and uncompromising spirit, prevented her son yielding to any arrangement with his injured wife, when an endeavour was made to that effect. In Mrs. Norton's case, which was supposed to have so much weight with the promoter of the Bill, the children were first sent to a lady almost a stranger to the wife, but with whom the husband was intimate; afterwards to their paternal uncle, Lord Grantley, who had never previously noticed their existence, having been on bad terms with his brother; and finally to their paternal aunt, Lady Menzies, who, from the terms she had been on with her sister-in-law, had never even *seen* two of the children, till they were taken from their mother. I have already shewn that in another instance the victims of this *nominal custody* were sent into a foreign country, to the care of utter strangers, and out of the way of all friendly protection: in no one of the cases given, has the *real custody* been with the father; in no one case has it been chosen with any view to the advantage of the child; but in almost all with an

express intention of wounding and grieving the mother to the uttermost, and of effectually preventing her obtaining any communication with her offspring, by placing them in the hands of those least likely to shew her any mercy or indulgence.

It is a gross thing that a father should leave his children with common hirelings, or persons indifferent to their welfare, and reside himself in a distant part of the country; and yet prevent the mother from having any opportunity of seeing or hearing of them. It is a gross thing that a woman should, as in one of the cases referred to, only learn her child's death through the medium of a newspaper; and those who support the "right of Custody" do not sufficiently consider that it *involves* this right and power of doggedly denying all *intelligence* of the infant. Men whose profession or pursuits have required a residence in the East or West Indies, or in any other of the distant spots in which the sons of our thickly peopled country labour for a fortune, will comprehend, without the aid of imagery, how strong, under such circumstances, is the desire to to hear of parted friends, how welcome the letters and the news from the land of their birth. In a far more bitter exile, the exile of a mother from the infants she watched by night and by day, the deprivation of such intelligence may well be supposed to cause unutterable pain. The ship that brings "no news from England," to a man in the situation we have described, leaves, even in the sting of present disappointment, a hope for the future; and he is

enabled (probably *compelled*) to turn his attention to surrounding matters connected with his profession or employment. The woman has no future hope to cheer *her* anxiety; and, as all the occupations of female life arise out of, and are dependent on, the affections, she has no compulsory employment to engage and relieve her mind.

What strange and insupportable tyranny would it be thought, if the law permitted a father, or an elder son, to *exile* a child or brother, and to deny and cut off all communication with the natural ties of their home! Yet this is, in fact, the power granted in this instance, and exercised by the husband over the wife. The law of Scripture, and of social life, alike uphold *filial* dependence and obedience; there is an express commandment to the purpose; notwithstanding which, since the most barbarous ages, it was never understood that the child is entirely at the disposal of the father, *without reference to any protection from the State*. Why, then, should the wife be entirely at the mercy of her husband in a matter involving her privileges as a rational and sentient being? We are apt to treat with contempt and surprise the customs of other nations in the matter of marriage and laws for women; we consider it an infringement of natural rights, that a young girl should be given away by her parents or superiors to a man she never saw, without liberty of choice or refusal; we protest against the doctrines of the Turks, that women have no souls and are but the toys of passion. Yet what a ludicrous contradiction our own law implies, when

it gives the young girl a power of choice, and considers the *mother* a cypher. The condition of mother is far more important than that of a young unmarried girl. She is under God responsible for the souls and bodies of the new generation confided to her care; and the woman who is mother to the children of a profligate and tyrannical husband, is bound by her *duty*, even if she were not moved by the strong instinct of her own heart, to struggle against the seizure of her infants. It is not *her* happiness alone that is involved, *theirs* is also at stake; their comfort, their well-being, perhaps the tenor of their whole future lives, depend on their not being legally permitted to be made the innocent victims of their father's caprice. To refuse the protection which would enable a blameless wife to continue her care of infants in such a case, merely on the plea that the law will not interfere with the husband, what is it but to deny the position of the woman as a rational and accountable creature? What is it but to adopt in a degree the Turkish creed, and consider her merely as the toy of an hour? What is it but to say, "In the bloom of your beauty you were given to belong to this man; his satiated fancy has wandered from you to another; there is no help for it; you are nothing of yourself; the children borne by you while his attachment lasted, are of course his; the law does not acknowledge your separate claim or share in them; they neither belong to you, nor you to them."

It is an old and true saying, "Oh, Liberty, how

many crimes are committed in thy name!" and it might be thus paraphrased, "Oh, Expediency, how much injustice is upheld in thy name!" for who could believe that honest and honourable men would gravely argue that it is a fit state of the law, and one which had better not be altered, which permits a cruel or adulterous husband to take his children from the mother who bore and reared them, and give them to any stranger he pleases, himself the only judge under what circumstances this cruelty shall be inflicted!—his own bad and revengeful passions the only guide to a selection of the guardianship which is to influence the destiny of his child! Who could believe that, after it was shown what this admission of *nominal custody* had led to, it would be gravely argued that it would be a pity to disturb the general rule which gave all fathers power to do the like? Who could believe that, because it is the duty of a wife to show rational and proper submission to her husband, it would therefore be gravely argued that she has no more claim to the children she may have by him, than the female of some dumb animal to the calves, foals, or puppies bred for *their owner*? Who could believe that the same law, which refuses to assist the father to regain possession of his son at the age of fourteen, will authorize the seizure from the mother (by any stratagem or violence) of an infant under that age, for the purpose of being delivered to one who perhaps entertains aversion both to mother and child; it may be to one whose inter-

est it is that the child should not exist? Who could believe that, because there are loose profligate wives in the world, as well as loose profligate husbands, it would be gravely argued that *no* woman, however clear the case of ill-usage, however monstrous the circumstances of wrong, should have any chance of redress, by being made an exception from this bitter law of her country? If only six recorded instances in thirty years, were brought forward against the officers of different regiments, proving that gross tyranny and injustice, and open torture had been inflicted upon the men under their command; all shewing that no check existed to prevent such abuse of power; can any one doubt that the legislature would provide a check, and fence it round with the best securities they could, without hesitation or delay, without once referring to the small number of cases in which oppression had taken place? *All* legislation is for individual exceptions; and as no scale has hitherto been fixed of the number of individual exceptions necessary, before a measure of social protection shall be put in force, we are to presume that the English law does not *knowingly and willingly* permit even a *single* case of injustice and wrong to the subject. It has been suggested to me, that it would be very absurd reasoning. (and indeed I think it would); if a man were to write from a newly established colony, "We have, as yet, comparatively few instances of theft; and those of murder are still more rare; consequently our code contains no reference to these two

crimes, nor are penalties attached to their commission." So false, so strange, so perverted, does the argument appear to me which would oppose the Custody Bill on the ground of the rarity of the cases of oppression, that I can scarcely comprehend how it can be admitted or entertained by intelligent minds.

Either let the English law discountenance and forbid separations by mutual consent, or, permitting them, let some sort of protection be possible where the woman has just cause of complaint. It cannot be for the advantage of the female sex, that they should be taught that good conduct avails them nothing in a claim of this nature; it cannot be for the advantage of the child, that a bad father should be able to take it from a good mother, or prevent a good mother from having access to it. The entire loneliness, too, in which the woman is thus left, deprived at once of the most important and rational interest of her life, must be anything but favourable to her future well-doing. If her marriage is indissoluble because *she* has not misconducted herself, and yet the offspring of the marriage is held to belong to the party who *has* misconducted himself, would it not require the religious resignation of a martyr to prevent a woman from reasoning thus within herself: "My marriage is made a mockery of that holy tie, through no fault of mine; my children are taken from me, though I have never done anything to deserve it; I am condemned by the law to punishment without committing any crime, and I am

viewed by society with harshness and distrust on account of a position I cannot help. It would be almost better to have been *divorced* from my husband, and to have become an object of kindness and protection to one whose affection would have replaced the ties of which I am so unnaturally bereaved, than to live in this perpetual loneliness; perpetually insulted by opinions which at present I do not deserve."

It cannot be doubted, that if it once comes to be clearly understood among women, that the power of protection, which up to the present time they have ignorantly appealed to, does not exist, and is refused by the legislature; the temptation to *divorce* among those who are struggling to bear and forbear in an unhappy home for their children's sake, will be fearfully increased. There are, thank God, many high and holy principles, besides the love of her children, to prevent a woman sinning; but this affection is admitted, even by the opponents of the Bill, to be a very principal check; and if, instead of allowing it full force, by making a positive distinction between the woman who has deserved to lose her children, and the woman who has not, the infant is held to be completely at the husband's disposal, or that of his mistress, friends, and abettors; the woman who foresees an impending separation, and knows that she must at all events be the only sufferer, will be terribly tempted, unless guarded by very strict religious principle, to commit the cowardice of endeavouring to escape great sorrow, by plunging into great re-

morse. In short, if separations by consent could be lessened by such an understanding of the law, it would only be *by the frequent substitution of entire divorce for the divorce a mensa et thoro*.

That such an understanding has not hitherto existed among *women*, I have already shewn in discussing the 'check' it was supposed to entail against separations; that it has not existed universally, even among *lawyers*, is also certain. Sir W. Follett and Serjeant Wilde (no mean authorities in legal matters) entertained to the very last a doubt as to the soundness of the decision in Mrs. Greenhill's case: which case was, as we have seen, decided by precedent and example from other instances of a like nature, all following the opinion given by Lord Ellenborough in *Rex v. de Manneville*. And this original case of precedent is very curious, inasmuch as it contains within itself the *double principle* on which the courts have acted, namely the direct assumption of power to interfere with the *father*, combined with a non-admission of the claims of the *mother*. For although the Court of Chancery refused, as well as the Court of King's Bench, to restore the infant on the mother's petition, an order *was* made restraining the father from taking it out of the kingdom, and out of the jurisdiction of the Court. As De Manneville was a Frenchman, (an emigrant) there could hardly be a clearer or more decided interference than to say "you shall not take your child, born in England, and a subject of England, to your native country."

And it is necessary to notice this, as it has been so obstinately argued, (in spite of the instances which prove the contrary,) that the paternal right is now, for the first time, to be attacked and interfered with. The question has been, in all cases of disputed custody, "on what principle do the Courts interfere?" And all the decisions which have been made, did not, as it appears, clear up that question in the opinion of some lawyers. Insomuch that the original title to Serjeant Talfourd's measure ran thus: "A Bill to *declare and amend* the laws relating to Infant Custody;" or, to obtain first a clear understanding what actually *was* held to be the law of the land on this point, and then remedy the defects (if any) which should be found to exist in it. If the escaping from a portion of the ignorant personal abuse lavished upon him, be a matter for the learned serjeant's consideration, it is a pity the title of the bill was ever changed; since it appears the one afterwards decided on was not considered a whit more clear or satisfactory; but on the contrary, was seized on by a certain class of his opponents as a subject of quite as much discussion and vituperation as the measure itself.

The understanding, then, of the Law of Infant Custody, has still *to be made general*, whatever the eventual decision of our legislative assembly may be as to the present attempt to alter it. Parliament is to *declare* the law, which has been for years vainly struggling to free itself from a mass of confusion and dispute; and if, after its form of hideous injustice be

clearly seen and defined, it be *only declared*, and not *amended* ; if the general understanding throughout Great Britain is to be, that men may execute in the privacy of their own houses such tyranny as they would not dare to inflict on the meanest of their fellow-subjects anywhere else ; if it be declared that children, sent by heaven as a blessing and bond of peace, are to be considered chiefly as a means and instrument in the hand of the father to compel his wife to endure all things meekly ; if it be declared that the fair face of some smiling wanton shall not only seduce a husband from his wife, but shall replace to her child the image of his exiled mother, whose petition for redress is unheard :—If this is to be the declaration of this law—why, we can only wonder that such should be the decision of a Christian legislature in the nineteenth century, and turn to Him ‘ who heareth the cry of the oppressed ;’ to Him, in whose bright world of promise and equal justice there is so much necessity to believe, while we bow beneath the trials of this.

But, my Lord, I do not fear that such ever *will* be the understanding promulgated by the legislature of this free country. I do not believe that general and abject submission ever will be permitted to be enforced among women by instances of individual cruelty, now that this law has (happily for them,) been brought under the notice of Parliament. The Lower House responded eagerly to the appeal made to common sense and common feeling, and passed the

bill through all its three stages, with large and still increasing majorities. In the Upper house it was checked at its very first outset by a majority of *two*: the principal speakers being Lord Brougham and Lord Wynford.

No one who has ever heard Lord Brougham speak, on any occasion, can fail to perceive how completely the eloquence of the advocate and lawyer, the eloquence *at command*, is his forte. Carried away by no real enthusiasm or conviction himself, he does not produce it in others. His style of reasoning is strong, accurate, and fluent; but even while we admit it to be so, we feel a sort of inward consciousness that some juggler's trick, the "hey presto!" of some earthly magician, might so change the whole face of things, that all this power might be brought to bear *on the contrary side of the argument*. There is no orator who makes one understand so thoroughly the full force of an anecdote narrated of one of his brethren of the long robe, who, mistaking the tenor of his brief, argued with great skill and apparent warmth the cause of his client's adversary; but on being made aware of his error, said, with admirable composure—" *This*, my lord, and gentlemen of the jury, is what might be urged, and I have no doubt *will* be urged by the counsel on the other side;"—and immediately proceeded to answer his own objections, to destroy point by point the whole framework of his own oration, and to build a directly contrary argument on the ruins of his own train of reasoning. In

a different way, but in an equal degree, we are sensible that Lord Brougham could argue with the same facility *pro*, or *con*; and the effect of hearing him speak against a question in which one is interested, does not so much resemble any approach to conviction, as the restless and wistful anxiety of a man, who while his adversary's lawyer is making a clever address to the jury, wishes it had been possible to neutralize the dangerous ingenuity of his efforts by retaining him on the other side.

Those who heard the speech against Serjeant Talfourd's Bill, will comprehend my simile. It was impossible for both the discussing parties not to perceive how well Lord Brougham could have reasoned on behalf of *either*; and it was impossible for the party in favour of the Bill, not to wish, that his somewhat unexpected opposition had been turned against the objectors instead of themselves. When he enumerated one by one the instances of hardship and injustice women endured under certain laws, and argued that *therefore* (for the sake of uniformity,) they ought to be left to bear likewise the instance under discussion; it was impossible to avoid thinking how finely and warmly he could also have led the opposite argument, viz.: Why, because there were certain unavoidable anomalies and imperfect operations of law, we should not correct what *can* be corrected; why, because it is not in the nature of things that the weak should be *equal* with the strong, we should herefore encourage the strong universally to smite

and trample on the feeble ; why, because the inferior position of women entailed a degree of difficulty and uncertainty in the laws made for their separate protection, we should therefore leave them in one particular and grievous point without any protection at all.

But “the pleadings” were opened on the contrary side.

Lord Wynford followed Lord Brougham, and expressed his decided opposition to the Bill in terms of vehement bitterness ; a bitterness probably not lessened (if he shared the false impression that Serjeant Talfourd had been induced to bring forward this measure chiefly to obtain redress for Mrs Norton,) by the recollection of his own vain attempt as Mr Norton’s friend and referee, to arrange terms excluding that lady from her children ; or by the remembrance of the public animadversions which his Lordship had to refute at the time, as to the part erroneously supposed to have been taken by him in the prosecution of that affair. It is apparently very easy to feel great humanity for one set of mothers and not for another ; to abhor the unnatural separation of near relatives when it is expedient to raise a cry against the working of the New Poor Law, and to defend that unnatural separation when it is expedient to oppose the Infant Custody Bill. In the report of Lord Wynford’s speech on the first of these subjects, nothing can exceed his abhorrence of the cruelty of these separations ; in the report of Lord Wynford’s

speech of the 31st July, 1838, nothing can exceed the vehemence of his defence of these separations. On which occasion was he most thoroughly in earnest, when he supported two conflicting principles? Or did he support them alternately with equal earnestness, believing it to be a hardship on the labourer's wife and the aged pauper to be parted from their offspring, but thinking it no hardship at all on the mother, whose rank in life, and exemption from toil, left her no other real and fit occupation *but* the education of her children? Upholding on the one hand the doctrine that general rules, general prohibitions, and general restrictions, were of such great and manifest importance, that their necessity overbore all consideration of individual suffering and cruel injustice; and denying, on the other, that any valid or proper excuse *could* be found in the plea that instances must arise of occasional hardship in the attempt to obey to the letter this new law;—a law not prospective in any of its provisions, but suddenly subversive of *ancient custom*, which, dear to us all, is doubly dear to the poor and ignorant, inasmuch as they are totally unable to calculate the benefits conferred by change on the future, while they are unfortunately but too well able, from the scantiness of their personal comforts, to perceive that part of its Temporary Effect which lessens their enjoyment of the Present.

When we see Lord Brougham employing his skilful and laborious pleading in defence of the liberties and social rights of the black population; and Lord

Wynford remonstrating with his customary indignant energy against the presumed defects of the New Poor Law ; while *both*, in their anxiety for the cause to be advanced, apparently think no more of the numerous and conflicting difficulties which surround each of these topics, than they would of the roots and shrubs which it might be necessary to clear away, to turn a tract of wild country into arable land ; we hear with surprise the one advocating the oppression of bad men over their unoffending wives, and the other upholding as a fit legislative enactment the parting of a guiltless mother from her helpless child : the last, on the plea that it would be madness so to relax the law as to admit of *the indulgence of exceptions* ; the first, by the argument that because tyranny cannot be prevented in *some* instances, it should not be resisted in *any*. This does certainly seem a contrasting species of eloquence ; a contradictory state of principles in a man's mind ; but we know that however strictly a '*general rule*' may be observed in the laws relating to women, it is frequently found to be swerved from, in the political opinions of men. Without therefore attempting to meet a certain class of objectors on their own shabby and childish ground ; without retorting their imputation of motives for bringing forward certain measures, by equally conjectural motives for opposition of those measures, I am content to believe, first, that a man may execrate oppression when endured by one class of his fellow creatures, and honestly defend it when endured by another ; and secondly, that a man may perceive act

to be grossly cruel under one set of circumstances, which, presented to him in a different view, appear perfectly justifiable.

In a very thin attendance of the House of Lords, the Bill which had passed the Commons, was lost (by a majority of *two* only) upon the first discussion; if that can be called a discussion which merely consisted of one long speech in opposition from Lord Brougham, and one from Lord Wynford. Out of the small minority, Lord Lyndhurst, Lord Holland, and the Duke of Sutherland signed a protest against the rejection of the measure; and it is probable that had the Bill, by passing the first reading, obtained more general attention among the Peers, the result would have been as favourable as in the Lower House. But there is more disposition in the Upper House to divide the questions which present themselves for consideration into distinct classes, and to consider those classes as more especially concerning particular sub-divisions of their great body; and though this is not strictly enforced as a "general rule" (the Bishops, for instance, being by no means acknowledged as umpires in all the Church questions), yet there was, on the occasion of the Infant Custody Bill, a very strong desire to "leave it all to the *Law-Lords*." In the House of Commons there is a great deal of energy and enthusiasm to spare, a great deal of young warm blood, easily roused by stories of oppression and wrong, a great many gentlemen willing and eager to speak on various subjects; and if not a great deal of what may properly be called *spare time*, at least a

great deal of time which they contrive to spare. In the House of Lords there is little of all this. They are much more cautious, and they are also much more indolent. They are men in the actual enjoyment of hereditary rights, distinctions, and privileges, and are, consequently, more jealous of infringement and alterations. They are (as a general body) older men ; they have seen too much done and suffered in their time to be so fired with the prospect of doing, or moved by the narration of suffering ; they are apt also (forming as they do the controlling check on the representatives of the entire nation) to consider questions as narrow and trivial which do not affect the interest of great masses ; they are men whose age, rank, and fortune, make habits of luxury and comfort usual and indispensable. You cannot get the Peers to sit up till three in the morning listening to the wrongs of separated mothers, and the recital of the cases from De Manneville down to Greenhill ; they are disturbed at the preposterous importance set by the women on the society of their infant children, and doubtful as to the effect of such a claim on the authority of the heads of families. On the whole, they are rather puzzled and provoked than interested, by a discussion of this nature, and it is a relief to shift the responsibility, such as it is ; to consider it as a purely technical and legal question ; and to sink back in a cushioned carriage, satisfied that " Abinger's opinion," or " Wynford's speech," or " Brougham's opposition," will fairly settle what may be the amount

of endurance a woman shall be legally bound to undergo.

It is not the only instance in which that which is bitterly felt, is lightly taken; and though I am not arguing with ignorant disrespect, against the obvious wisdom of being chiefly guided in all deliberation, by the opinions of those whose opportunities have already made them most familiar with the subject under discussion; I deprecate the notion that this Infant Custody Bill is to be considered purely as a technical and legal question. *How* it is to be framed, how guarded, how enforced, is a portion of the argument naturally left to the decision of the "Law Lords;" but the decision whether there shall be any such measure, is for the entire body of the Peers; for it is not a question of law, but of common judgment and common feeling. If, on the one hand, the Bill was *opposed* by an Ex-Chancellor, it was also *introduced* by an Ex-Chancellor, and one of the most distinguished men among the Conservative party; if the eloquence of Lord Brougham was exerted *against* it, the eloquence of Lord Lyndhurst was exerted in its favour; if Sir E. Sugden considered the measure unwise and impracticable, Lord Denman, Sir W. Follett, and many others of equal eminence, considered that it was just and useful. It received the cautious and deliberate support of your Lordship; the present holder of the great seal; and the addition of your opinion, that such a measure might be put into force without disturbing the practice of the courts. It was a matter on which *legal*

opinion was divided," and which therefore remained open to free discussion on its general merits, and requiring only, I am convinced, that general attention should be drawn to it, to ensure a measure whose provisions might satisfy *all* parties ; based on humanity and discretion, and guarded by legal knowledge.

I hope to hear Lord Lyndhurst's eloquence once more exerted on this subject in the House of Lords, and exerted successfully. If there are no 'Law-Lords' in the House of Commons, there is at least legal authority ; and I will never believe that the different social position of men, will so utterly change their relative opinions on a subject which simply addresses itself to clear judgment and good feeling ; that *some* measure of the nature of that which was passed with so great a majority in the one House, will not be framed and carried through the other. I hope that under your Lordship's Chancellorship, and by your Lordship's support, the law may be brought to do justice to those, whose sufferings are not the less intense, because they are borne in helplessness, and comparative obscurity.

I am, my Lord, with much respect,

Your Lordship's most obedient Servant,

PEARCE STEVENSON.

December 15, 1838.







